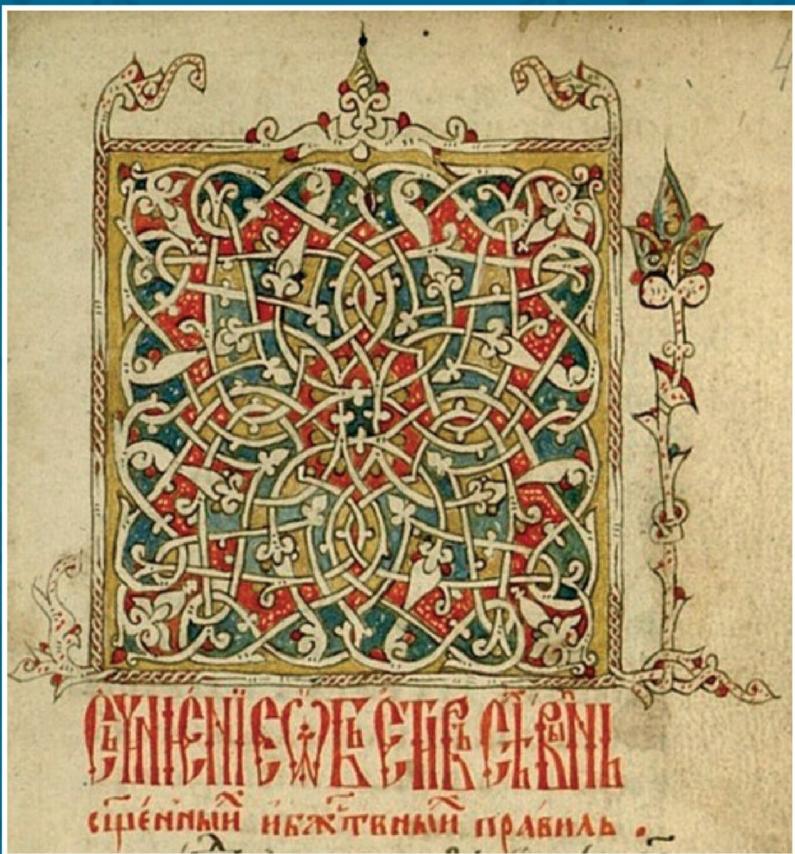


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A History of Serbian Mediaeval Law

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Srđan Šarkić



A History of Serbian Mediaeval Law

Medieval Law and Its Practice

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By

Srđan Šarkić



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Preface

This book has been designed as a study guide to Serbian mediaeval law, which has been practically unknown outside of the Serbo-Croatian speaking area. With the exception of the Law Code of Stefan Dušan, which has been translated into most major world languages, such as English, French, German, Russian and Italian, the other sources have remained out of reach of most scholars' attention. The majority of studies concerning Serbian mediaeval law have also been written in Serbian (or Serbo-Croatian) language. However, we also have just one book in Serbian that treats the complete matter of Serbian mediaeval law. This is the monograph of the former professor of Belgrade University, in the Faculty of Law, Teodor Taranovski,¹ under the title *History of Serbian Law in Nemanjić's State* (*Историја српског права у немањићкој држави*), (Belgrade 1931–1935; second edition Belgrade 1996). Although this excellent book represents an invaluable study guide for anyone who wants to make acquaintance with Serbian mediaeval law, some of the author's conclusions seem to be unacceptable today. Naturally, a lot of works have been written on the subject between 1935 and today.

I hope that this book might be useful for everyone who has interest in the history of the Middle Ages, especially Serbian and Byzantine legal history, but who cannot read literature in the Serbo-Croatian language.

¹ Serbian Cyrillic *Теодор Тарановски*; Russian *Фёдор Васильевич Тарановский*; 12/24 May 1875–1823 January 1936. Taranovski was born in Plonsk (Polish *Płońsk*, Russian *Плоньск*), at that time in Russia, today in Poland, to a Russian father and Polish mother. He went to school in Warsaw (Warszawa) and studied and graduated from the Russian Law Faculty in Warsaw. He spent several years in Germany and France, where he studied legal history. Taranovski's University career started in 1903 in Warsaw. Before coming to the Kingdom of Serbs, Croats and Slovenes (Yugoslavia), he taught at the Universities of Yaroslavl (Ярославль), Yuryev (Юрьев, today Tartu, ex Dorpat in Estonia) and Saint Petersburg (Санкт Петербург). He left Russia in January 1919, and arrived in Belgrade in March 1920. Already in April 1920 he was appointed Professor of History of the Slavonic Laws at the Faculty of Law in Belgrade, where he taught until his death in 1936. On his life and career, see J. Danilović, "Doprinos T. Taranovskog srpskoj pravnoj istoriografiji" ["Contribution of T. Taranovski to Serbian Legal Historiography"], preface to the second edition of T. Taranovski's *Istoriја srpskog prava u nemanićkoj državi* (Belgrade 1996), pp. 7–18.

Abbreviations

AASJE (AACJE)	Arhiv za arbanasku starinu, jezik i etnografiju (Архив за арбанаску старину, језик и етнографију)
APDN (АПДН)	Arhiv za pravne i društvene nauke (Архив за правне и друштвене науке)
APFB (АПФБ)	Analji Pravnog fakulteta u Beogradu (Анали Правног факултета у Београду)
ASPh	Archiv für slawische Philologie
BONNAE	Corpus Scriptorum Historiae Byzantinae, Bonn 1828–1878 (Bonn Corpus)
BZ	Byzantinische Zeitschrift
DOP	Dumbarton Oaks Papers
FBR	Forschungen zur byzantinischen Rechtsgeschichte
Glas SANU (Глас САНУ)	Glas Srpske Akademije Nauka i Umetnosti (Глас Српске Академије Наука и Уметности)
Glas SKA (Глас СКА)	Glas Srpske Kraljevske Akademije (Глас Српске Краљевске Академије)
Glasnik DSS (Гласник ДСС)	Glasnik Društva Srpske Slovesnosti (Гласник Друштва Српске Словесности)
Glasnik SND (Гласник СНД)	Glasnik Skopskog Naučnog Društva (Гласник Скопског Научног Друштва)
Glasnik SUD (Гласник суд)	Glasnik Srpskog Učenog Društva (Гласник Српског Ученог Друштва)
HZ (ХЗ)	Hilandarski zbornik (Хиландарски зборник)
IČ (ИЧ)	Istorijski časopis (Историјски часопис)
IG (ИГ)	Istorijski glasnik (Историјски гласник)
ISN (ИСН)	Istorija srpskog naroda (Историја српског народа)
JIČ	Jugoslovenski istorijski časopis
KJP (КЈП)	Klasici jugoslovenskog prava (Класици југословенског права)
LSSV	Leksikon srpskog srednjeg veka [Lexicon of the Serbian Middle Ages], ed. S. Ćirković and R. Mihaljčić. Belgrade 1999
MHJSM	Monumenta historico-juridica Slavorum Meridionalium

ODB	The Oxford Dictionary of Byzantium, editor in chief A. Kazhdan. New York/Oxford 1991.
PG	Patrologiae Cursus Completus, Series Graeca, éd. Migne, J.P., Paris 1857–1866.
PKJIF (ПКЈИФ)	Prilozi za književnost, jezik, istoriju i folklor (Прилози за књижевност, језик, историју и фолклор)
Rad JAZU	Rad Jugoslavenske Akademije Znanosti i Umjetnosti
REB	Revue des études byzantines
Spomenik SKA (Споменик СКА)	Spomenik Srpske Kraljevske Akademije (Споменик Српске Краљевске Академије)
Spomenik SANU (Споменик САНУ)	Spomenik Srpske Akademije Nauka i Umetnosti (Споменик Српске Академије Наука и Уметности)
SSK (ССК)	Stara srpska književnost (Стара српска књижевност)
SSA (CCA)	Stari Srpski Arhiv (Стари Српски Архив)
SZ (C3)	Svetosavski zbornik (Светосавски зборник)
VIINJ (FBHPJS, ВИИНЈ)	Vizantijski izvori za istoriju naroda Jugoslavije (Fontes Byzantini Historiam Populorum Jugoslaviae Spectantes, Византијски извори за историју народа Југославије)
VV (ВВ)	Vizantiyski vremenik (Византийский временикъ)
ZFFB (ЗФФБ)	Zbornik Filozofskog fakulteta u Beogradu (Зборник Филозофског факултета у Београду)
ZMSKS (ЗМСКС)	Zbornik Matice srpske za klasične studije (Зборник Матице српске за класичне студије)
ZRPFNS (ЗРПФНС)	Zbornik radova Pravnog fakulteta u Novom Sadu (Зборник Радова Правног факултета у Новом Саду)
ZRVI (ЗРВИ)	Zbornik radova Vizantološkog instituta (Зборник радова Византолошког института)
ZS-SR	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte

PART 1

Background and Sources

..

Historical Background

The Serbs (Serbian Cyrillic *Срби*, romanized *Srbija*) are a South Slavic ethnic group and nation native to the Balkans (mediaeval Αἴμος, Ottoman Turkish *Balqan*, meaning “thickly wooded mountain”) in southeastern Europe. According to the information of Byzantine Emperor and writer Constantine VII Porphyrogenitos (Πορφυρογέννητος), Serbs (Σέρβοι, Σέρβιοι)¹ settled in the Balkans around 630 A.D., during the reign of the Emperor Herakleios ('Ηράκλειος).² Very little detail is known about the Serbs until the end of the 8th century, when the first Princes—Višeslav (Βοΐσέσθλαβος, Вишеслав), Radoslav ('Ροδόσθλαβος, Радослав) and Prosigoj (Προστηγόης, Просигој)—were mentioned by the same author. Their names are the only thing we know about them. In the middle of the 9th century, Prince Vlastimir (Βλαστίμηρος, Властимир) appeared. During Vlastimir's rule, Presiam (Πρεσίαμ) of Bulgaria (836–852) unsuccessfully attacked the Serbs. Vlastimir's sons and grandsons fought each other for power, using the support of mighty neighbours, Byzantium, Bulgaria and Croatia. Around 927, Časlav Klonimirović (Τζεέσθλαβος Κλωνίμηρος, Часлав Клонимировић) came to power. He escaped from Bulgaria, where he had been born, and gained the assistance of Byzantine Emperor Romanos I Lekapenos ('Ρωμανός Α' Λεκαπηνός, 920–944) by promising to be an imperial vassal, rallied the Serbs living in Croatia and Bulgaria, and created a powerful State rivaling Bulgaria. However, after 950 traces of Serbian rulers completely disappear from the sources. At the beginning of the 11th century the centre of the Serbian State moved from Raška (Latin *Rassia* or *Raxia*, Serbian Cyrillic *Рашка*, region in the south of Serbia) to Diokleia (Дукља, Διόχλεια), which later became known as Zeta (Зета, Ζέντα, modern Montenegro). The sources mention Prince Jovan (John) Vladimir (Владимир, Βλαδιμήρος, Јован Владимири, died in 1016), whose personality became the object of legends and romantic stories, and he would later be celebrated as a saint in the Greek Orthodox Church. Struggles

¹ *Serboi*, a term that first appears in the *Geography* of Ptolemy to designate a tribe dwelling in Sarmatia, probably on the Lower Volga. The name reappears, in the form *Serbloï*, in Constantine VII Porphyrogenitos and in Theophanes Continuatus, usually in the same context as the Croatians, Zachlumians, and other peoples of Panonia and Dalmatia. See “*Serboi*”, in *ODB*, pp. 1875–1876.

² Constantine Porphyrogenitos, *De administrando imperio*, cap. 29–36, ed. Gy. Moravcsik and R.J.H. Jenkins (Budapest 1949; new edition Washington D.C. 1967), pp. 122–164.

for the independence of Dioklea (Duklja) from Byzantium began in about 1040. Exploiting the confusion within Byzantium, provoked by the rising of the Slavs from Macedonia under Petar Deljan ('Οδελεάνος, Петар Дељан), the Prince of Duklja Stefan Vojislav (Βοϊσθλάβος Στέφανος, Стефан Војислав, c.1040–c.1052) succeeded in throwing off Byzantine power. In further battles Vojislav asked the Papacy for support, requiring the royal title for himself and an independent archbishopric for Duklja. His son and successor Michael (Μιχαηλᾶς, Mihajlo, Михајло, c.1052–c.1081) made his Principality stronger, helping the new rising of the Slavs in Macedonia under George Voitech (Γεώργιος ὁ Βοϊτάχος, Đorđe Vojteh, Торђе Вожех, 1072–1073), and in 1077 he obtained the royal crown from the Pope Gregory VII (Hildebrand, Pope from 1073–1085). Mihajlo's son Constantine Bodin (Βοδίνος, Бодин, c.1081–c.1101) changed the policy of his precursors and restored the good relationship with Byzantium. His greatest success was the foundation of the Archbishopric of Bar that had the jurisdiction over the whole of Duklja (1089).³ After the death of Constantine Bodin, the Kingdom of Duklja split, with the leading role among the Serbian lands taken by the rulers of Raška with the title of *župan*.⁴ Byzantine Princess Anna Komnena ("Αννα Κομνηνή), in her famous book *The Alexiad* ('Αλεξιάς, books VIII and IX), mentioned Bolkan (Βολκάνος, Вукан, c.1083–1114), who fought against her father, the Emperor Alexios. The chronology of the later *župans* is not certain, but before Nemanja's arrival to the throne the sources mention the names of Uroš I (Οὐρεστις, Урош), Uroš II, Desa (Δέσε, Деса) and Tihomir (Тихомир, Nemanja's brother).

The arrival to power of Stefan Nemanja (Νεεμάν Στέφανος, Стефан Немања) in 1168 was the beginning of the political independence of the Serbian mediæval State. Nemanja was a founder of a dynasty which ruled over Serbia for more than two centuries. During Nemanja's reign the feudal system was introduced in Serbia and the power and reputation of the Church increased.

After victory over his brother Tihomir, Nemanja took the title of Great Župan (1168) and ruled as a vassal of Byzantine Emperor Manuel Comnenos (Μανουήλ Κομνηνός) until 1180. The death of the powerful Byzantine Emperor made the independence of Serbia possible. And that fact caused new struggles with Byzantium. After the battle of the River Morava (Морава, Μοράβος) in 1190, in which Nemanja was beaten, a peace treaty was concluded and confirmed by the marriage of Stefan (Στέφανος τοῦ Νεεμάν), Nemanja's second son, to the Byz-

³ Bar (Serbian Cyrillic *Бар*, Italian *Antivari*, Albanian *Tivar*) is a coastal town and seaport in southern Montenegro.

⁴ *Župan* was the ruler of *župa*, the Old Slavonic name for the counties. On *župa* see Part Three.

antine Princess Eudokia (Εύδοκία), daughter of Alexios Angelos ("Αγγελος"), the Emperor's brother and later an emperor himself (1195–1203). Beside struggles for independence, Nemanja concluded a treaty with the city of Dubrovnik (Serbian Cyrillic *Дубровник*, Latin *Ragusium*, Greek Ράγουσιον, Italian *Ragusa*) which enabled Ragusan merchants to purchase goods in Serbia. He also fought vigorously against the Bogomilian heresy, that penetrated into Serbia from Macedonia and Bulgaria.

In 1196, Nemanja withdrew from power, leaving the throne to his second son Stefan, son-in-law to the now-Emperor Alexios III Angelos. Nemanja's eldest son Vukan (Вукањ) became the ruler in Zeta (Diokleia or Duklja), but dissatisfied with this lesser inheritance, he overthrew his brother in 1202 with the help of the Hungarians. Vukan's reign lasted only a few years; in 1204 or 1205, supported by the Bulgarians, Stefan came back to the throne. Stefan was an intelligent ruler who governed over the State under very complicated circumstances in the Balkans, provoked by the crusade's conquest of Constantinople (1204) and the splitting of Byzantium into several States. Leaving the policy of friendship with Byzantium, he turned to the mighty Republic of Venice. Through the support of the Doge, he obtained in 1217 the royal crown from Pope Honorius III (Ονώριος, Pope from 1216–1227) and became the first Serbian King (so-called "Prvovenčani", "First Crowned"). During the reign of Stefan Nemanjić, his younger brother Rastko (Растко, monk from 1191, under the monastic name Sabba, Сава) founded the autocephalous Serbian Church (1219) and became its first archbishop (ἀρχιεπίσκοπος).

The sons and successors of Stefan Nemanjić, Stefan Radoslav (Стефан Радослав, Στέφανος Δούκας in Greek texts, 1228–1234) and Stefan Vladislav (Стефан Владислав, 1234–1243) were not particularly notable rulers. Their short reigns were overshadowed by the strong influence of their mighty neighbours: the Emperor from Thessaloniki Theodore I Angelos (Θεόδωρος "Αγγελος", father-in-law of Radoslav, 1215–1230) and Bulgarian Emperor John II Asen (Bulgarian Cyrillic Иван Асен, father-in-law of Vladislav, 1218–1241). A new political and economical rise of the Serbian State began under the reign of Stefan's youngest son, Uroš (Οὐρεστις, Урош, 1243–1276). Invited by the King, German miners (so-called Sasi) came to Serbia and started the exploitation of metals. Uroš was overthrown by his first son Dragutin (Драгутин, 1276–1316), who was forced to share the throne in 1282 with his brother Milutin (Милутин, Μηλωτίνος, 1282–1321). Dragutin remained in the northern part of Serbia, while Milutin ruled in the south. From the beginning of his reign Milutin initiated wars against the recently restored Byzantine Empire, conquering territories. The fact that two Kings existed in Serbia caused a civil war between the brothers. The majority of Serbian lords (*vlastela*) stood on Dragutin's side, but with strong support

from the Church, Milutin beat his brother, and after Dragutin's death in 1316 he remained the only King.

Milutin's successor was his son Stefan Uroš, called Dečanski (after his foundation, the monastery Dečani),⁵ who had to fight with Dragutin's son Vladislav and later with his half-brother Constantine. According to a treaty from 1282, Dragutin's sons should have succeeded their uncle. Stefan Dečanski suppressed the pretenders to the throne, but the mighty lords were not satisfied with his peaceful policy, and they brought his son Stefan Dušan (Στέφανος, Стефан Душан) to power (1331–1355). The reign of Stefan Dušan represents the pinnacle of the development of the Serbian mediaeval State. Using a civil war in Byzantium between Emperor John v Palaiologos (Παλαιολόγος, 1341–1391) and the usurper John VI Cantacouzenos (Καντακουζηνός, 1347–1354), Dušan conquered vast lands in Greece and doubled the territory of Serbia. As he became one of the most powerful monarchs in Europe, he emphasized his pretensions on the imperial crown. In 1345 he raised the Archbishop of Serbia to the rank of Patriarch, and a year later he took the imperial dignity (Tsar), claiming to have replaced the Empire ruled from Constantinople with his own Empire. The whole organization of power in Dušan's Empire was arranged according to Byzantine models, and in 1349 he proclaimed the first part of his famous Law Code. Dušan's son and successor Uroš (1355–1371) was not able to stop the independent rules and mutual struggles of mighty lords, that made Turkish conquests easier. During the life of Emperor Uroš, the brothers Mrnjavčević (Мрњавчевић), Vukašin (Краљ, Вукашин) and Uglješa (Οὐγγλέσης, Угљеша), who governed over Macedonia, organized separately the raid against the Turks, which ended in 1371 with a disastrous defeat on the River Maritsa (Bulgarian and Serbian Cyrillic *Марица*, Greek Εβρος, Latin *Hebrus*, Turkish *Meriç*), near Černomen (Черномен, Greek Ορμένιο) in Greek Thrace. The Emperor Uroš died in the same year and left no successor. The independent nobles did not try to organize common resistance against the Turks. The most powerful among them, Prince Lazar ('Ελεάζαρος, Лазар), opposed the Turks, but was killed in 1389 in a famous battle at Kosovo field (Косово поље, Περίον Κόσοβον, "Field of the Blackbird", a valley in southern Serbia between Priština and the Laba River), as was the Turkish Sultan Murad I (Greek Μουράτ, Ἀμουράτης, 1362–1389). Stefan Lazarević, the son of Lazar (Στεφάνεω τοῦ Ἐλεαζάρου, Стефан Лазаревић), was obliged to become the vassal of the Sultan Bayazid and to participate together with his lord in the battle of Angora (Ankyra, Ἀγκυρα, modern

⁵ The monastery of Dečani (Serbian Cyrillic *Дечани*, Albanian *Deçanit*) is located by the Dečanska Bistriza (Дечанска Бистрица) river gorge at the foot of the Prokletije Mountains in the region of Metohija, about 2km from the town of Dečani (in Kosovo).

Ankara) against the Mongols (1402). After Turkish defeat to the Mongols, Stefan Lazarević got the title of Despot from the Byzantine Emperor John VII Palaiologos (in the name of his uncle Emperor Manuel II, who was at that time absent from Constantinople) and soon after that became the vassal of the Hungarian King Sigismund (Zsigmond, 1387–1437). Although Stefan Lazarević was at first a Turkish and than a Hungarian vassal, Serbia had a vast territory during his reign. The economy grew, and the monastery of Resava (Manasija, Манастира) became an important centre of art and science. Stefan Lazarević was succeeded by his nephew Đurađ Branković (Γεώργιος, Ђурађ Бранковић, 1427–1456), who despite his abilities as a statesman could not stop the Turkish conquest. After the short reign of his son Lazar (Лазар) Branković (1456–1458) Serbia lost its independence: the last capital of the State, the city of Smederevo,⁶ was conquered by the Turks in 1459.⁷

⁶ Smederevo (Serbian Cyrillic Смедерево, Latin, Italian, Romanian and Greek *Semendria*, Hungarian *Szendrő* or *Vég-Szendrő*, Turkish *Semendire*) is a city in eastern Serbia on the right bank of the Danube, about 45 km downstream of Belgrade.

⁷ On Mediaeval Serbian history, see K. Jireček, *Geschichte der Serben* (Gotha 1911), and the Serbian translation by J. Radonić, *Istorija Srba* [History of the Serbs], vol. I (Belgrade 1952), and the third edition (1978), which contains the works for further readings, done by R. Mihaljić. See also *Istorija srpskog naroda* [A History of the Serbian People], by a group of authors, vol. I (from the oldest times till 1371) (Belgrade 1981) and vol. II (1371–1537) (Belgrade 1982); S. Ćirković, *La Serbie au Moyen Age* (Paris 1992) and *I Serbi nel medio evo* (Milan 1992). Cf. also S. Ćirković, V. Dedijer, I. Božić, and M. Ekmečić, *History of Yugoslavia* (New York 1974).

Sources

1 Legal Sources

1.1 Before the 12th Century

The oldest surviving Serbian legal document is a charter presented to the monastery of Hilandar (Χελανδάριον)¹ in 1198 by the founder of the Serbian dynasty, Stefan Nemanja. Whether there were some other written sources before the 12th century is debatable. The oldest Slavonic historical source, the so-called *Letopis popa Dukljanina* (*Annals of the Priest from Diokleia*), in Chapter IX says that King Svetopelek (otherwise unknown in South-Slavonic history) convoked his people in order to define the borders of his Kingdom. According to the anonymous author of the *Annals* (*Chronicle*) the assembly lasted twelve days and the different questions were discussed in the presence of Pope Stephen's (Στέφανος, "crown", "wreath")² legates and the delegates of the Byzantine Emperor Michael (Μιχαήλ) III (842–867). Finally "a lot of laws and good customs were instituted [by the King]. Those who want to know more should read the Slavonic Book called Methodius, where all the good things instituted by the very good King can be found".³ The expression "the Slavonic Book" and "Methodius" have given rise to many hypotheses. Some scholars think that this book represents a statute which established the borders between the counties. Another hypothesis is that this text is a collection of different documents. There is also the opinion that the priest from Diokleia, by the term "Methodius", means the famous Byzantine *Nomokanon in 50 Titles*, translated

¹ Serbian monastery on Mount Athos, located near Esphigmenou, 2 km inland from the north-eastern coast of the peninsula. Originally a Greek foundation, Hilandar may have been established in the late 10th century by George Chelandarios ("the Boatman"); by 1015 it was deserted, but in 1198–1199 the monastery was restored as a Serbian *koinobion* (κοινόβιον, lit. "common life") by Stefan Nemanja.

² In the 9th century, when the assembly probably was maintained, there were three Popes with the names of Stephen: Stephen IV (816–817), Stephen V (885–894) and Stephen VI (896–897). It is not clear which the author is referring to.

³ The Slavonic original of the *Annals of the Priest of Diokleia* did not survive. We dispose today only with a Latin translation, made by the author himself, on the demands of his colleagues, the priests of the Archbishopric of Bar. The Latin text runs as follows: *Multas leges at bonos mores instituit, quos qui velit agnoscere, librum Sclavorum qui dicitur "Methodius" legat, ibi reperiet qualia bona instituit rex benignissimus. Letopis popa Dukljanina*, ed. F. Šišić (Belgrade-Zagreb 1928), p. 308, and *Letopis popa Dukljanina*, ed. V. Mošin (Zagreb 1950), p. 56.

into the Slavonic language by Archbishop and missionary to the Slavs Methodius (Greek Μεθόδιος, Old Slavonic Мѣѳодїи, c.815–6 April 885) himself.⁴ This theory considers *The Slavonic Book* as the first Serbian law or legal miscellany, composed of Roman laws (*leges*) and customs (*boni mores*), like the legal collections in the Occidental mediaeval States, called *Leges Romana Barbarorum*.⁵

It is impossible to say anything more precise about the Slavonic Book called Methodius, because this text has not survived.⁶ Also, the *Annals of the Priest from Diokleia* is a very unreliable source: its author, an anonymous priest from Bar, had a very poor education. His knowledge of historical facts was very often confused with untrustworthy tales and legends.

1.2 Charters

Before the proclamation of the Law Code of Stefan Dušan in 1349, charters were the most important legal documents in Serbia. According to their contents, most charters were donations, by which the monarch gave land and privileges, either to the Church and monasteries, or to nobles or cities. The great majority of the surviving charters in mediaeval Serbia were those granted to monasteries (165), while only a few survive that were given to the nobles or cities. Until the reign of Stefan Dušan, the Serbian Kings wrote their charters in the Old Serbian language, and from the 14th century in Greek as well.⁷

⁴ See *Letopis*, ed. Šišić, pp. 126–136.

⁵ N. Radojičić, “Proslava šestotinete godišnjice Dušanova zakonika” [“Celebration of Six Hundred Year Anniversary of Dušan’s Law Code”], 15 and 16 December 1949, SANU (Belgrade 1949), p. 3.

⁶ See M. Petrak, “Liber Methodius of Presbyter Diocleas and the Nomocanon of Saint Methodius, Following the Traces of Alexander Soloviev”, in *125 godina od rođenja Aleksandra Vasiljevića Solovjeva* [125 Years from the Birth of Aleksandar Vasiljevič Solovjev] (Belgrade 2016), pp. 139–153.

⁷ The most important collection of charters are those edited by F. Miklosich, *Monumenta serbica spectantia historiam Serbie, Bosnae, Ragusii* (Vienna 1858); S. Novaković, *Zakonski spomenici srpskih država srednjega veka* [Legal Documents of Serbian States of Middle Ages] (Belgrade 1912, reprint Belgrade 2005); A. Solovjev, *Odabrani spomenici srpskog prava* [Selected Documents of Serbian Law] (Belgrade 1926); Lj. Stojanović, *Stare srpske povelje i pisma* [Old Serbian Charters and Letters], I. 1 (Belgrade–Sremski Karlovci 1929); I. 2 (Belgrade–Sremski Karlovci 1934) (reprint Belgrade 2006); A. Solovjev and V. Mošin, *Grčke povelje srpskih vladara—Diplomata graeca regum et imperatorum Serviae* [Greek Charters of Serbian Monarchs] (Belgrade 1936, Variorum reprints, London 1978); T. Živković, S. Bojanin, and V. Petrović, *Selected Charters of Serbian Rulers (XII–XV Century) Relating to the Territory of Kosovo and Metohia I*, ed. Centre for Studies of Byzantine Civilization (Athens 2000) (with a transaltion in English); V. Mošin, S. Ćirković, and D. Sindik, *Zbornik srednjovekovnih čiriličkih povelja i pisama Srbije, Bosne i Dubrovnika, knjiga I, 1186–1321* [Miscellany of Mediaeval Cyrillic Charters and Letters from Serbia, Bosnia and Dubrovnik, book I, 1186–1321] (Belgrade 2011). Since 2002,

The oldest surviving Serbian charter was presented to the monastery of Hilandar in 1198 by Stefan Nemanja (Стефан Немања) and his son Sabba (Сава). The founder of the Serbian dynasty promulgated this charter after his withdrawal from the throne (when he became a monk and took the name Simeon). The charter contains a very important introduction (*arenga*⁸ or *prooimion*, προοίμιον, a rhetorical introduction with philosophical and political overtones), which defines the Serbian mediaeval ideology as being in accordance with the Byzantine system of a hierarchical world order. The other provisions confirm that in the 12th century it was forbidden to the serfs (*meropsi*) to live off the land of their lords.⁹

The most important legal acts from the time of Stefan Nemanjić (so-called "Prvovenčani", "First Crowned") are two charters promulgated in 1219–1220 and 1221–1224 to the monastery of Žiča (Жича),¹⁰ which became the seat of the autocephalous Serbian Archbishopric. The King gave the monastery fifty-seven villages, eight mountains for pasture with 217 shepherd families and a large number of serfs. Charters contain the provisions on the jurisdiction of the Church, define different fines depending on social position, and for the first time introduce regulations for marriage and family law.¹¹

Faculties of Philosophy from Belgrade, Eastern Sarajevo and Banja Luka have started the review *Stari srpski arhiv* [Old Serbian Archives; henceforth SSA], which publishes new editions of Serbian and Bosnian charters (published volumes 1–19, 2002–2016). The best studies concerning Serbian diplomatics are the series of articles by S. Stanojević, "Studije o srpskoj diplomatičici" ["Studies on Serbian Diplomacy"], *Glas SKA*, sv. 90 (1912), pp. 68–113; sv. 92 (1913), pp. 110–209; sv. 94 (1914), pp. 192–262; sv. 96 (1920), pp. 1–74; sv. 100 (1922), pp. 1–48; sv. 106 (1923), pp. 1–96; sv. 110 (1924), pp. 1–25; sv. 132 (1928), pp. 1–57; sv. 156 (1933), pp. 41–75; sv. 157 (1933), pp. 153–249; sv. 161 (1934), pp. 1–53; sv. 169 (1935), pp. 1–120.

8 A mediaeval Latin word; Italian *aringa*, French *harangue*, Spanish *arenga = oratio publica, declamatio, concio*.

9 Editions: Novaković, *Zakonski spomenici*, pp. 384–385; Solovjev, *Odabrani spomenici*, pp. 11–14; V. Ćorović, *Spisi Svetog Save* [Scriptures of Saint Sabba] (Belgrade–Sremski Karlovci 1928), p. 1; Đ. Trifunović, V. Bjelogrlić, and I. Brajović, "Hilandarska osnivačka povelja sv. Simeona i sv. Save" ["St. Simeon's and St. Sabba's Founding Charter Presented to the Monastery of Hilandar"], in *Osam vekova Studenice* [Eight Centuries of Monastery Studenica] (Belgrade 1986), pp. 49–60; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 67–69.

10 Near the city of Kraljevo (Serbian Cyrillic *Краљево*) in central Serbia.

11 Editions: Novaković, *Zakonski spomenici*, pp. 571–575; Solovjev, *Odabrani spomenici*, pp. 1–23; Stefan Prvovenčani, *Sabrana dela* [Stefan the First Crowned, Complete Works], translated and edited by Lj. Juhas-Georgijevska and T. Jovanović (Belgrade 1999, reprint Belgrade—Kraljevo 2017), pp. 110–123; Živković, Bojanin, and Petrović, *Selected Charters*, pp. 36–44 (with English translation); Mošin, Ćirković, and Sindik, *Zbornik*, pp. 89–92 and 93–95. On this charter see the recent work by N. Kršljanin, "Kralj kao zaštitnik crkve: pravna analiza Žičkih povelja Stefana Prvovenčanog" ["The King as Protector of the Church: A Legal Analysis of the Žiča Charters of Stefan the First Crowned"], in *Kraljevstvo*

The oldest Serbian charter that regulates the position of the dependent inhabitants was given to the monastery of the Holy Virgin in Bistritza (Бистрица), by King Vladislav, between 1234 and 1243.¹²

King Milutin was the greatest donator to the Church among all the Serbian Princes. He built or reconstructed about forty churches and monasteries and issued numerous charters. Three are the most important for legal history: one given to the monastery of Saint George near Skoplje (1299/1300); a second given to the monastery of Saint Stephen in Banjska (1314/1316); and a third given to the monastery of Gračanitza near Priština (1315 or 1321).¹³

The charter given to the Saint George's monastery is one of the most extensive Serbian charters. It regulates the legal status of the monastery's manor in Macedonia, the region where Byzantine influence was always strongest. Notwithstanding significant Byzantine influence, King Milutin granted independence to the manor, a situation more similar to that in Occidental European countries. In this charter we find the first mention of the fief (*πρόνοια, pronoia*), land held by military tenure.¹⁴

i Arhiepiskopija u srpskim i pomorskim zemljama Nemanjića [The Kingdom and the Archbishopric of the Serbian and Maritime Lands of the Nemanjić Dynasty] (Belgrade 2019), pp. 413–449.

¹² Complete editions by I.J. Stojanović, *Stari srpski hrisovulji, akti, biografije, letopisi, tipici, pomenici, zapisi i dr.* [Old Serbian Chrysobulls, Acts, Biographies, Annales, Typikos, Inscriptions etc.], Spomenik SKA III (1890), pp. 6–7 and Mošin, Ćirković, and Sindik, *Zbornik*, pp. 165–167. Abridged edition by Novaković, *Zakonski spomenici*, pp. 589–591; Solovjev, *Odabrani spomenici*, pp. 27–31. On this charter see also V. Mošin, "Povelja kralja Vladislava Bogorodičinom manastiru u Bistrici i zlatne bule kralja Uroša" ["King Vladislav's Charter to the Monastery of Holy Virgin in Bistritza and the Golden Bulls of King Uroš"], *Glasnik SND* 21 (1940), pp. 21–32 and R. Grujić, "Jedna docnija interpolacija u hrisovulju kralja Vladislava (1234–1243) za manastir Bistricu u Polimlju" ["A Later Interpolation in the Chrysobull of King Vladislav for the Monastery Bistritza in the Lim Valley"], *Glasnik SND* 13 (1934), pp. 200–203.

¹³ See V. Mošin, "Povelje kralja Milutina—diplomatička analiza" ["King Milutin's Charters—Diplomatic Analysis"], *IČ* 8 (1971), pp. 53–86.

¹⁴ Complete editions: R. Grujić, "Tri hilendarske povelje" ["Three Charters for Hilandar"], *Zbornik za istoriju Južne Srbije i susednih oblasti, knj. 1* (1936), pp. 5–24; V. Mošin, L. Slaveva, and K. Ilievska, *Gramoti na manastiriot Sv. Georgi-Gorg Skopski, Gramota na kral Milutin* [Charters for the St. George's Monastery near Skopje, Charter of the King Milutin], in *Spomenici na srednovekovnata i ponovata istorija na Makedonija, 1* (Skopje 1975), pp. 205–238; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 315–328. Abridged editions: Novaković, *Zakonski spomenici*, pp. 608–621; Solovjev, *Odabrani spomenici*, pp. 69–82. See also R. Grujić, "Vlastelinstvo Svetoga Đorda kod Skoplja od XI–XV veka" ["The Manor of the Saint George's Monastery near Skopje from the 11th to 15th Centuries"], *Glasnik SND*, 1 (1925), pp. 45–77 and M. Blagojević, "O jednakim obavezama stanovništva u hrisovuljama manastira Sv.

In the charter given to the monastery of Saint Stephen in Banjska,¹⁵ we find special provisions under the title “Law of the Church People” (*Законъ людемъ црковнімъ*) and “Law of the Vlachs” (*Законъ Влахомъ*), regulating the position of Church serfs (the “Church People”) and dependent shepherds¹⁶ (Vlachs).¹⁷

Gračanica's (Gračanica, Serbian Cyrillic *Грачаница*, Albanian *Graçanicës*) charter survived as an inscription on the monastery's wall.¹⁸ After listing of all goods, men and privileges granted to the monastery by the King, the charter contains a special chapter under the title “The Old Law of the Serbs” (*Законъ стари Срблемъ*), regulating the duties of dependent peasants.¹⁹

Two charters of King Stefan Dečanski and his son King Dušan contributed to the monastery of Dečani (1330 and 1336) are of great importance. Containing a list of all serfs and their families (2432 houses and 40 villages) given to the Church, they enable us to study precisely family relationships.²⁰

Georgija kod Skoplja” [“On the Identical Duties of the Population in the Chrysobulls Issued for the St. George Monastery near Skopje”], *ZRVI* 46 (2009), pp. 149–165.

¹⁵ Banjska (Serbian Cyrillic *Бањска*, Albanian *Banjkës*) is a small village near Zvečan in Kosovo.

¹⁶ ‘Shepherd’ is how Vlachs has usually been translated into English, and this will be used through this book as convention, but Vlachs were not exclusively/solely keepers of sheep. Some kept cattle or both.

¹⁷ Complete editions: I. J. Kovačević, *Svetostefanska hrisovulja* [St Stephen's Chrysobull], Spomenik SKA IV (Belgrade 1890); V. Jagić, *Svetostefanski hrisovulj kralja Stefana Uroša II Milutina* [St Stephen's Chrysobull of King Stefan Uroš II Milutin] (Vienna 1890); Mošin, Ćirković, and Sindik, *Zbornik*, pp. 455–469; D. Trifunović, *Svetostefanska hrisovulja* [St Stephen Chrysobull], knjiga I, *fototipija izvornog rukopisa* [First Book, A Phototypic Reproduction of the Original Manuscript], knjiga II, *fototipija ranijih izdanja i prevod na savremeni srpski jezik* [Second Book, Phototypic Reproduction of Previous Editions, Followed by a Modern Serbian Translation] (Belgrade 2011). Abridged editions: Novaković, *Zakonski spomenici*, pp. 622–631; Solovjev, *Odabrani spomenici*, pp. 89–99. On the history of the monastery see S. Novaković, “Manastir Banjska, zadužbina kralja Milutina u srpskoj istoriji” [“Monastery of Banjska, Pious Endowment of King Milutin, in Serbian History”], *Glas SKA* 32 (1892), pp. 1–55.

¹⁸ The monastery is located in Gračanica, a Serbian enclave near Lipljan, some 5 km from Priština. It is situated on the Kosovo field, on the left riverbank of Gračanka, a right tributary of the Sitnica River. The name is derived from Slavic *Gradac*, a toponym of fortified cities.

¹⁹ Complete editions: Solovjev, *Odabrani spomenici*, pp. 99–105; M. Pavlović, “Gračanička povelja” [“Gračanica's Charter”], *Glasnik SND* 3 (1928), pp. 105–141; B. Živković, *Gračanička povelja* [“Gračanica's Charter”], Sveti arhijerejski sinod Srpske pravoslavne crkve (Belgrade 1992); Živković, Bojanin, Petrović, *Selected Charters*, pp. 69–81 (with English translation); Mošin, Ćirković, and Sindik, *Zbornik*, pp. 499–503. Abridged edition: Novaković, *Zakonski spomenici*, pp. 633–637.

²⁰ Complete edition by M. Milojević, *Dečanske hrisovulje* [Dečani Chrysobulls], *Glasnik SUD, drugo odeljenje, knjiga XII* (Belgrade 1880). Diplomatic edition with a translation into the

The most important charter from the reign of Tsar Stefan Dušan was presented to his foundation, the monastery of Saint Archangels Michael and Gabriel near the city of Prizren²¹ in 1348. Among other provisions, the charter contains a chapter on the legal position of dependent peasants ("Law of the Serbs") and shepherds ("Law of the Vlachs").²²

The first surviving charter given to a noblemen is from the time of King Milutin; the monarch confirms (summer 1316) the old privileges of a noble family Žaretić (Lovretić), from the city of Bar.²³

Another important charter for legal history is that of Emperor Dušan confirming in 1350 a hereditary estate (*baština*, **БАЩИНА**) to the lesser lord (*vlastelicić*) Ivanko Probištitović,²⁴ as well as two documents from the same ruler, granting some rights to his Greek courtier George Phokopoulos (Γεώργιος Φωκόπουλος) from 1346 and 1352.²⁵

There are two surviving charters to noblemen from the reign of Tsar Uroš: the first is from 1357, where the Emperor confirms to his sister Irene (Јерина, Είρηνη) the hereditary estate (*baština*) of her husband Preljub (Прељуб); by the second from 1363, he allows the headman (*čelnik*) Musa (Myca) the exchange

modern Serbian language by P. Ivić and M. Grković, *Dečanske hrisovulje* [Dečani Chrysobulls] (Novi Sad 1976). Abridged editions: Novaković, *Zakonski spomenici*, pp. 646–655; Solovjev, *Odabrani spomenici*, pp. 112–119.

²¹ Prizren (Serbian Cyrillic *Призрен*, Albanian *Prizreni*, Greek Πριστρίανα) is a historic city located in Kosovo. The city has a population of around 178,000, making it the second largest town in Kosovo. The residents of Prizren are today mostly ethnic Albanians. Prizren is located on the banks of the River Bistritza (Бистрица), and on the slopes of the Šar Mountains (Шар Планина) in the southern part of Kosovo.

²² Complete editions: J. Šafarik, "Hrisovulja cara Stefana Dušana kojom osniva manastir Sv. Arhangela Mihajla i Gavrila u Prizrenu godine 1348" ["Emperor Stefan Dušan's Chrysobull Founding the Monastery of St. Archangels Michael and Gabriel near City of Prizren in 1348"], *Grasnik DSS* 15 (1862), pp. 266–317; S. Mišić and T. Subotin-Golubović, *Svetozar-handelovska hrisovulja* [St. Archangel's Crisoboule], (Belgrade 2003). Abridged editions: Novaković, *Zakonski spomenici*, pp. 682–701; Solovjev, *Odabrani spomenici*, pp. 135–142.

²³ Editions: A. Solovjev, "Povelja kralja Milutina barskoj porodici Žaretića" ["King Milutin's Charter to the Family Žaretić from the City of Bar"], *AASJE*, knj. III, 1–2 (1926), pp. 117–125; *Odabrani spomenici*, pp. 88–89; S. Božanić, "Povelja kralja Milutina barskoj porodici Žaretić, leto 1316" ["King Milutin's Charter to the Family Žaretić from the City of Bar, Summer 1316"], *ssa* 6 (2007), pp. 11–17; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 451–452.

²⁴ Editions: Solovjev, *Odabrani spomenici*, pp. 150–152; V. Aleksić, "Povelja vlasteličiću Ivanku Probištitoviću, 28. maj 1350" ["Charter to Lesser Lord Ivanko Probištitović, 28 May 1350"], *ssa* 8 (2009), pp. 69–80. On the family Probištitović see A. Solovjev, "Sudbina jedne vlasteoske porodice iz srednjovekovne Srbije" ["Destiny of a Nobleman Family from Medieval Serbia"], *Starinar* 8–9 (1933/34), pp. 63–71.

²⁵ Solovjev, and Mošin, *Diplomata graeca*, pp. 73–75 and 179–181.

of the city of Zvečan (Звечан)²⁶ with the county (*župa*) for the city of Brvenik (Брвеник)²⁷ with county.²⁸

From the 15th century the charter of Despot Đurad Branković survives. Presented to the great headman (*veliki čelnik*, велики челник) Radič (Радич, 1428/1429), it confirms the gift of seventy villages as an hereditary estate.²⁹

A Latin translation of a charter issued in 1343 by King Dušan to the Albanian city of Kroja (modern Krujë) is the only surviving charter granted to towns.³⁰

1.3 Treaties with Dubrovnik

During the political independence of the Serbian mediaeval State (until 1459), its most important commercial partner was the small City Republic of Dubrovnik (Ragusa). Although the community of Dubrovnik recognized the supreme authority of Byzantium (until 1205), Venice (until 1358) and Hungary (until 1526), the Republic enjoyed a large amount of autonomy and could sign international treaties. Merchants from Dubrovnik had a great interest in maintaining good relations with Serbian rulers and increasing trade with Serbia and Bosnia. Therefore, the founder of the dynasty, Stefan Nemanja, signed the first treaty with Dubrovnik, and his example was followed by all Serbian monarchs. The treaties with Dubrovnik have become an important source of Serbian mediaeval law.³¹

²⁶ Zvečan (Serbian Cyrillic Звечан, Albanian *Zveçani*) is a town and municipality located in the Mitrovica District in Kosovo with a population of 16,650.

²⁷ Brvenik (Брвеник) is today a small village in the municipality of Raška (South Serbia).

²⁸ Editions: Novaković, *Zakonski spomenici*, pp. 312–314; Solovjev, *Odabrani spomenici*, pp. 166–167; M. Šuica, “Povelja cara Uroša o zameni poseda između kneza Vojislava i čelnika Muse” [“Charter of Exchange of Domains Between Prince Vojislav and Headman Musa, 15 July 1363”], *SSA* 2 (2003), pp. 143–166. On this county (*župa*) see A. Solovjev, “Jedna srpska župa za vreme carstva” (“One Serbian County from the Epoch of the Empire”), *Glasnik SND* 3 (1927), pp. 25–42.

²⁹ Novaković, *Zakonski spomenici*, pp. 333–335; On the great headman Radič see S. Novaković, “Veliki čelnik Radič ili Oblaćić Rade 1413–1435” (“The Great Headman Radič or Oblaćić Rade 1413–1435”), *Glasnik SKA* 1 (1881), pp. 122–164.

³⁰ Solovjev and Mošin, *Diplomata graeca*, pp. 310–321. Alfonso v, King of Aragon, confirmed on 19 April 1457 the privileges to the citizens of Kroja, referring to the charter of the Serbian King. Dušan's charter was signed *Stephanus fidelis in Christo crales Bugarorum*, but, as Solovjev and Mošin remark, the word *Bugarorum* must be an interpolation of the 15th-century copyist, as otherwise the signature matches completely other documents of Dušan.

³¹ See N. Porčić, *Dokumenti srpskih srednjovekovnih vladara u dubrovačkim zbirkama: doba Nemanjića* [Documents of Serbian Medieval Rulers in Dubrovnik Collections: The Nemanjić Period] (Belgrade 2017).

The first contract with Dubrovnik was a peace treaty concluded on 27 September 1186 between Stefan Nemanja and his brother Miroslav (Мирослав, Prince of Hum, modern Hercegovina) and the Republic of Dubrovnik. Although this document is a peace treaty, it contains provisions guaranteeing freedom of movement and trade to the Ragusans on the territory of Serbia.³²

In 1205 Dubrovnik was forced to recognize the supreme power of Venice, which did not tolerate the competition of Ragusan merchants on the sea. Trade with Serbia, which stood behind the walls of the city, became an imperative for the economic existence of the Republic. Because of this, the number of treaties with the Serbian Kings increased.

Stefan Nemanjić concluded three treaties with Dubrovnik: in 1205, 1215 and 1220. His first son, King Radoslav, did the same in 1234, and his brother King Vladislav did so in 1238 and 1240.³³ Starting with the reign of King Uroš, when mining began, the treaties with Dubrovnik became more frequent and more extensive. Uroš concluded treaties in 1252 and 1254, and his successors Dragutin and Milutin did so in 1276, 1281 (Dragutin), 1282, 1283, c.1289, 1301 and 1302 (Milutin).³⁴

In the 14th century, trade between Serbia and Dubrovnik came to its zenith. As a result, we have thirteen treaties concluded by Stefan Dečanski, Stefan Dušan and Stefan Uroš.³⁵ The most important of all these is Dušan's from 1349.

³² Editions: Novaković, *Zakonski spomenici*, pp. 132–133; Solovjev, *Odabrani spomenici*, pp. 3–4; V. Foretić, “Ugovor Dubrovnika sa srpskim velikim županom Stefanom Nemanjom i stara dubrovačka džedina” [“Dubrovnik’s Treaty with Serbian Great Župan Stefan Nemanja and Old Ragusan Hereditary Estate”], *Rad JAZU*, knjiga 283 (Zagreb 1951), pp. 51–118; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 45–48.

³³ Novaković, *Zakonski spomenici*, pp. 136–139; Solovjev, *Odabrani spomenici*, pp. 26–27; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 85–87, 129–130, 137–138.

³⁴ Novaković, *Zakonski spomenici*, pp. 149–152, 154–158; Solovjev, *Odabrani spomenici*, pp. 83–85; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 211–214, 215–216, 235–236, 271–274, 275–276, 285–286, 289–290, 343–347.

³⁵ Those are the treaty of Stefan Dečanski from 1326; Dušan's treaties from 1331, c.1334, 1345 and two in 1349; Uroš's treaties in 1356, two in 1357, 1360 and three in 1362. Editions: Novaković, *Zakonski spomenici*, pp. 163–164, 166–167, 169–172, 175–187; Stojanović, *Povelje i pisma*, I. 1, pp. 59–64; N. Porčić, “Povelja kralja Stefana Dečanskog Dubrovčanima iz 1326 godine” [“Charter of King Stefan Dečanski to the Ragusans from 1326”], *ssa* 6 (2007), pp. 19–34; D. Ječmenica, “Povelja kralja Stefana Dušana Dubrovčanima o trgovini” [“Charter of King Stefan Dušan to the Ragusans on Trade”], *ssa* 10 (2011), pp. 17–28; D. Ječmenica, “Hrisovulja cara Stefana Dušana Dubrovčanima sa dva prateća akta, 20. septembar 1349” [“Chrysobull of Tsar Stefan Dušan to Ragusans with Two Following Documents, 20 September 1349”], *ssa* 11 (2012), pp. 33–58. Among those treaties the charter of the King Stefan Dečanski from 1 May 1330, issued to the Republic of Venice, should be mentioned. The King guarantees to the merchants of Venice the freedom of movement and trade in

It served as a model to all future treaties with Dubrovnik until the fall of the Serbian mediaeval State. According to the provisions of that treaty, the Tsar himself assumed the obligation to indemnify Ragusan merchants in case they were plundered on the territory of Serbia. Further on, it was forbidden to the Ragusans to transport weapons through Serbia to neighbouring countries. For disputes between Ragusans and Serbs, Serbian courts were to be used. Duties were to be paid on the market places, where the Ragusans sold their goods. In case of a shipwreck of any Ragusan or Venetian³⁶ ship at the Serbian shore, it was strictly forbidden to the Serbs to take anything from its cargo. In case of war between Serbia and Dubrovnik, the Ragusans had a term of six months to leave Serbia and return to Dubrovnik freely.

The treaties of Prince Lazar from 9 January 1387, Despot Stefan Lazarević from 2 December 1405 and Despot Đurađ Branković from 1428 and 1445 repeated the provisions of Dušan's document from 1349 in general.³⁷

The content of all those treaties are similar: the Serbian monarch gives the privilege of trade to the merchants of Dubrovnik in the form of a charter. Although the documents were always signed by both sides, the will of the Serbian rulers was decisive.³⁸

Serbia. Edited by Novaković, *Zakonski spomenici*, p. 262 and K. Mitrović, "Pismo kralja Stefana Uroša III mletačkom duždu Frančesku Dandolu" ("The Letter of King Stefan Uroš III to the Venetian Doge Francesco Dandolo"), *ssa* 15 (2016), pp. 9–18.

³⁶ Although Venice was mentioned only once in this treaty, Novaković considered that the document was valid for the Republic of Venice as well, because the Ragusans were under their supreme authority and because the first deputee in the negotiations was the Venetian marquis Nicolaus Georgio (Novaković, *Zakonski spomenici*, p. 265; Ječmenica, *ssa* 11, pp. 34, 41, 47, 50, 51, 57). On the personality of Nicolaus Georgio (Никола Георгиј) see S. Ćirković, "Povelja kralja Vukašina Dubrovniku kojom potvrđuje povelje ranijih srpskih vladara" ["Charter of King Vukašin to Ragusans Confirming the Charters of Previous Serbian Rulers"], *ssa* 4 (2005), pp. 170–171.

³⁷ Novaković, *Zakonski spomenici*, pp. 200–203, 218–221, 231–236; A. Mladenović, *Povelje kneza Lazara* [Charters of Prince Lazar] (Belgrade 2003, second edition Belgrade 2015), pp. 192–193; A. Mladenović, *Povelje i pisma despota Stefana* [Charters and Letters of Despot Stefan] (Belgrade 2007), pp. 43–51; A. Veselinović, "Povelja despota Stefana Lazarevića Dubrovčanima" ["Charter of Despot Stefan Lazarević to Ragusans"] *ssa* 10 (2011), pp. 151–164. There is also a peace treaty of Stefan Lazarević with Venice (1423), confirming the freedom of trade to the merchants of Venice. Document written in Latin (Novaković, *Zakonski spomenici*, pp. 280–286).

³⁸ See M. Kos, "Dubrovačko-srpski ugovori do sredine 13-og veka" ["Ragusan–Serbian Treaties until the Middle of the 13th Century"], *Glas SKA* 123 (1927), pp. 1–65 and M. Jasinski, "Ugovori srpskih vladara sa Dubrovnikom kao spomenici starog srpskog prava" ["Treaties of Serbian Rulers with Dubrovnik as the Sources of the Old Serbian Law"], *APDN* 25.9 (1930), pp. 169–178.

1.4 *Nomokanon (Νομοκάνον)*³⁹ or *Zakonopravilo (Законоправило)* of Saint Sabba

Serbian law from the early 13th century developed under the direct influence of Byzantine law. The first Byzantine legal miscellany that penetrated into Serbia, around 1219, was the *Nomokanon of Saint Sabba* or *Krmčija* (from Russian *Кормчая книга*, lit. *The Pilot's Book*). Although a large number of works have been written on the origin and the author of *Krmčija*,⁴⁰ many problems still remain: "The discussion is still going on and for a final solution one must wait until the whole of Sava's Kormčaja is published and submitted to the close scrutiny of philologists."⁴¹ Anyway, the majority of Serbian scholars think that the composer and translator of this *Nomokanon* was Sava Nemanjić (Saint Sabba) himself.⁴² On his way back from Nicaea (Νίκαια, modern *Iznik* in Turkey), where the Serbian Church got its autocephalous archbishopric, Sabba stopped in Thessaloniki, and it is here that he probably composed the famous *Nomokanon*.

The ecclesiastical rules of the *Krmčija* were taken from two Byzantine canonical collections, with canonist's glosses: the *Synopsis* (Σύνοψις κανόνων) of Stephen from Ephesos (Στέφανος ο Εφέσιος, beginning of the 6th century), with the interpretations of Alexios Aristenes (Αλέξιος Ἀριστηνός, c.1130)⁴³ and the *Syntagma of XIV Titles* (Σύνταγμα κανόνων εἰς 14 τίτλους), a work of an anonym-

39 Nomokanons are Byzantine compilations of secular laws (*νόμοι*) and ecclesiastical regulations (*κάνονες*, canons).

40 The list of works concerning *The Nomokanon of St Sabba* can be found in I. Žužek, *Krmčaja kniga*, Orientalia Christiana Analecta 168 (Rome 1964). See also T. Subotin-Golubović, "Nomokanon" (законоправило), in *LSSV*, pp. 446–449.

41 Žužek, *Krmčaja kniga*, p. 35.

42 Especially after the research of S. Troicki: "Ko je preveo Krmčiju sa tumačenjima?" ["Who Translated the Krmčija with Interpretations?"], *Glas SANU* 193 (1949), pp. 119–142 and "Kako treba izdati Svetosavsku Krmčiju (Nomokanon sa tumačenjima)??" ["How to Edit St. Sabba's Krmčija (Nomokanon with Interpretations)"], *Spomenik SANU* 102 (Belgrade 1952), 4. The review of the different opinions on authorship of *Krmčija* was presented by D. Bogdanović in a paper at the International Scientific Meeting (Belgrade, December 1976) dedicated to the work and life of St. Sabba: "Krmčija Svetoga Save" ["St. Sabba's Krmčija"], *Međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 91–99. See also M. Petrović, "Sveti Sava kao sastavljač i prevodilac Zakonopravila—srpskog Nomokanona" ["Saint Sava as the Compiler and Translator of the Zakonopravilo—Serbian Nomokanon"], *ič* 49 (2002), pp. 27–46. Cf. M. Petrović, *O Zakonopravilu ili Nomokanonu Svetoga Save, rasprave [On Zakonopravilo or Nomokanon by Saint Sava, Treaties]* (Belgrade 1990) and L. Burgmann, "Der Codex Vaticanus graecus 1167 und der serbische Nomokanon", *ZRVI* 34 (1995), pp. 91–107.

43 Under Emperor John II Komnenos (1118–1143), Aristenos wrote a commentary on the *Nomokanon* that probably antedated that of Zonaras. He fulfilled both ecclesiastical and secular functions.

ous author composed between 577 and 692, with the interpretations of John Zonaras ('Ιωάννης Ζωναράς, first half of the 12th century).⁴⁴ Among the Roman (Byzantine) laws (νόμοι), St Sabba's *Nomokanon* contains the whole *Procheiron* (Πρόχειρος Νόμος, *Handbook* or *The Law Ready at Hand*) of Basil I or maybe Leo VI (ΖΑΚΟΝΑ γραδεκаго глаавы in the Serbian translation)⁴⁵ and a translation of eighty-seven titles of *Justinian's Novels* (*Collectio octoginta septem capitulorum*). The author of this collection of ecclesiastical law of civil origin, created before 565, was the Patriarch of Constantinople John Scholastikos ('Ιωάννης Σχολαστικός).⁴⁶

The *Nomokanon* (or *Zakonopravilo* in the Serbian translation) of St Sabba has no prototype in any Byzantine or Slavonic codex, and it retained its place within the Serbian legal system, being neither challenged nor abrogated.⁴⁷

44 Historian, canonist, and theologian, high-ranking official at the court of Alexios I, died after 1159? His chronicle, *Epitome historion*, encompasses history from the creation of the world to 118. He also produced commentaries on the *Apostolic constitutions*, canons of councils, and Church fathers, as well as some hagiographical and homiletical works.

45 According to the researches of F.A. Biener, *Beiträge zur Revision des Justinianischen Codex* (Berlin 1833, reprint Aalen 1970), p. 225 and K.E. Zachariä von Lingenthal, 'Ο Πρόχειρος Νόμος *Imperatorum Basiliī, Constantī et Leonī Procheiron* (Heidelberg 1837), p. LX, the *Procheiron* used to be dated to 870–879 (more precisely 872), but must be regarded as a revision of the *Epanagoge* ordered by Leo VI in 907. See A. Schminck, *Studien zu mittelbyzantinischen Rechtsbüchern*, FBR, vol. 13, ed. Dieter Simon (Frankfurt am Main 1968), pp. 62–107; S.N. Troianos, *Οι πηγές του Βυζαντίνου δικαίου* (Athens—Komotini 1999, new edition 2011), pp. 176–181. Cf. N. Oikonomidès, "Leo VI's Legislation of 907 Forbidding Fourth Marriages. An Interpolation in the Procheiros Nomos (IV, 25–27)", *DOP* 30 (1976), pp. 173–193. Schminck's dating of the *Procheiron* (907) was challenged by Th.E. van Bochove, *To Date and not to Date: On the Date and Status of Byzantine Law Books* (Groningen 1996), pp. 29–56, who upheld the traditional dating of the *Procheiron*. The most recent examination of the authorship and dating of the *Procheiron*, that of J. Signes Codoñer and F.J.A. Santos, "La introducción al derecho (eisagoge) del patriarca Focio", *Nueva Roma* 28 (2007), pp. 160–278, for the most part maintains the traditional dating (870–879), but the authors add that the *Procheiron* was revised after the death of Leo VI, during the second decade of the tenth century.

46 On Byzantine canon law collections see two chapters written by S.N. Troianos: "Byzantine Canon Law to 1100" and "Byzantine Canon Law from the Twelfth to the Fifteenth Centuries", in *The History of Byzantine and Eastern Canon Law to 1500*, ed. W. Hartmann and K. Pennington (Washington D.C. 2012), pp. 115–169 and 170–214.

47 It is very strange that we still have no critical edition of *Krmčija*. The only edited fragment is the text from the *Procheiron* (*Zakon gradski*), based upon the transcript of Morača (Serbian Cyrillic *Morača*, monastery in Montenegro), done by N. Dučić, "Krmčija Moračka" ["Krmčija from Morača"], *Glasnik SUD* 11, odeljenje 8 (1877), pp. 34–134. In 1991 the photo-print reproduction of the *Ilovitsa* (Serbian Cyrillic *Иловица*, monastery in Montenegro)

1.5 Codification of Stefan Dušan

In the 14th century the Serbian monarchy became more powerful than the Byzantine, but the ideal of a world empire was still attractive to the Serbs. The system of the hierarchical world order is still found,⁴⁸ but the desire of the Serbian Kings was to become Emperors themselves. This was realized in 1346, when King Dušan proclaimed himself *the true-believing Tsar and Autocrat of the Serbs and the Greeks*. Educated as a young man in Constantinople, Dušan knew very well that if his State pretended to become an Empire, it should have, *inter alia*, its own independent legislation. Accordingly he began preparations for his own law code immediately after the establishment of the Empire, following the examples of his model, the great Byzantine Emperors and legislators Justinian I, Basil I and Leo VI. In a charter of 1346, in which he announced his legislative programme, he said that the Emperor's task was to "make the laws that one should have" (закони поставити јакоже подобасть имети).⁴⁹ These laws are, without a doubt, laws of the type which Byzantine Emperors had, namely general legislation for the whole of the State's territory. In the social and political circumstances, the Serbian Emperor (Tsar) had to accept existing Graeco-Roman (Byzantine) law, though modified in accordance with Serbian custom. A completely independent codification of Serbian law, without any Graeco-Roman law, could not be produced, and therefore the Serbian lawyers created a special *Codex Tripartitus*, codifying both Serbian and Byzantine law. The Russian scholar Timofey Dmitrijevič Florinskiy (Тимофей Дмитриевич Флоринский) noticed this as long ago as 1888, pointing out that in the oldest manuscripts Dušan's Code is always accompanied by two other compilations of Byzantine law: the abbreviated (*Epitome*, Ἐπιτομή) *Syntagma*⁵⁰ of Matheas

Manuscript from 1262 appeared, edited and appendices written by M. Petrović, Zakonopravilo ili Nomokanon Svetoga Save [Zakonopravilo or the Nomokanon of Saint Sava], (Gornji Milanovac 1991). Translation into modern Serbian language by M. Petrović and Lj. Štavljanin-Đorđević, Zakonopravilo Svetoga Save, knjiga I [Nomokanon of Saint Sabba, Book I] (Belgrade 2005), contains the translation of chapters 1–47 (the whole text has 64 chapters).

⁴⁸ See G. Ostrogorski, "The Byzantine Emperor and the Hierarchical World Order", *Slavonic and East European Review* 84 (1956), pp. 1–14.

⁴⁹ S. Novaković, *Zakonik Stefana Dušana, cara srpskog 1349–1354* [The Code of Stephan Dušan, Serbian Tsar 1349–1354] (Belgrade 1898, reprint Belgrade 2004), p. 5; see also Serbian Academy's edition, vol. III, p. 430 (see Chapter 2, note 71).

⁵⁰ *Syntagma* is a term used in patristic literature to designate any treatise or book, especially those that were scriptural, exegetic, or polemical in content. The term was extended to characterize some collections of canon law.

Blastares and the so-called “*Justinian's Law*”.⁵¹ Dušan's Law Code, in a narrow sense, is the third part of a larger Serbo-Graeco-Roman codification.⁵²

1.5.1 *The Syntagma* (Συνταγμα, Σύνταγμα)

This was a nomokanonic miscellany put together in twenty-four titles (each title has a sign of one Greek alphabet letter) by the monk Matheas Blastares from Thessaloniki in 1335.⁵³ From the ecclesiastical side Matheas Blastares used *The Nomokanon of 14 Titles* (Νομοκάνονος εἰς 14 τίτλους) and the commentaries of John Zonaras and Theodore Balsamon.⁵⁴ From the civil side he used the *Ecloga* of Leo III⁵⁵ and the *Procheiron*, *Epanagoge/Eisagogē*, *Novels of Leo VI*, and *Basilika*, i.e. the legislation of the first two Emperors of the Macedonian dynasty, Basil I (867–886) and Leo VI (886–912), called the “Recleansing of the Ancient Laws” (ἀνακάθαρσις τῶν παλαιῶν νόμων).⁵⁶ The *Syntagma* came to be known in Serbia in two translations, a full version and an abridged one.⁵⁷ The

⁵¹ T. Florinskiy, *Pamyatniki zakonodatelnoi dyatelnosti Dušana Tsara Serbov i Grekov* [Records of Legislative Work of Dušan, Tsar of the Serbs and Greeks] (Kiev 1888).

⁵² S. Šarkić, “L'idée de Rome dans la pensée et dans l'action du Tsar Dušan”, Idea giuridica e politica di Roma e personalità storiche I, Da Roma alla Terza Roma, documenti e studi, Rome 1990, pp. 141–156.

⁵³ For the problem of dating see C.G. Pitsakis, “De nouveau sur la date du ‘Syntagma’ de Matthieu Blastares”, *Byzantion* 51 (1981), pp. 638–639, who rejects the date of 1355 proposed by G.I. Theocharidis, in “Ο Ματθαίος Βλάσταρης καὶ η μονή του κυρ-Ισαάκ εν Θεσσαλονίκῃ”, *Byzantion* 40 (1970), pp. 437–459 and by I.P. Medvedev, “La date du Syntagma de Matthieu Blastares”, *Byzantion* 50 (1980), pp. 338–339.

⁵⁴ Byzantine canonist, born in Constantinople between c.1130 and 1140, died after 1195. Balsamon occupied high positions in the Church hierarchy, and he became Patriarch of Antioch (although he remained in Constantinople).

⁵⁵ *Ecloga* ('Εκλογὴ τῶν νόμων, literally “Selection of the Laws”), compilation of Byzantine law in 18 chapters, issued in 726, or more probably 741, by Leo III Isaurian in his name and that of his son Constantine V. Though the *Ecloga* continued to be based on Roman law (editors took provisions from Justinian's legislation), Leo revised it with a “correction towards greater humanity” (ἐπιδιόρθωσις εἰς τὸ φιλανθρωπότερον) and on the basis of Christian principles.

⁵⁶ Concerning the legal sources of Matheas Blastares see S.N. Troianos, “Περὶ τας νομικάς πηγές του Ματθαίου Βλάσταρη”, Επετηρίς Εταιρείας Βυζαντινών Σπουδών 44 (1979–1980), pp. 305–329.

⁵⁷ The full version was edited by S. Novaković, *Matije Vlastara Sintagmat* [Matheas Blastares' *Syntagma*] (Belgrade 1907). See also S. Troicki, *Dopunski članci Vlastareve Sintagme* [Supplementary Articles of Blastares' *Syntagma*] (Belgrade 1956). The author supplemented the edition of Novaković. Recently, the *Syntagma* has been translated into the modern Serbian language: Matija Vlastar, *Sintagma*, translated from Serbo-Slavonic language by T. Subotin-Golubović (Belgrade 2013). The Greek text of the *Syntagma* was edited by Γ.Α. Ράλλης and M. Πότλης, *Ματθαίου τοῦ Βλασταρέως Σύνταγμα κατὰ στοιχείον* (Ἐν Ἀθήναις 2013).

compilers of Dušan's codification radically abridged the earlier translation of the whole *Syntagma* from an original 303 chapters to 94. They had two reasons for so abbreviating the earlier text. The first was of a completely ideological character, as Matheas Blastares' *Syntagma* expresses the political hegemony of the Byzantine Empire on ecclesiastical as well as constitutional terms. Accepting the commentaries of Byzantine canonist Theodore Balsamon (Θεόδωρος Βαλσαμῶν), Matheas Blastares reflects the omnipotence of the Byzantine Emperor, his *dominium* both spiritual and political. He actually restricts the independence of the autocephalous Churches whilst emphasizing Byzantine hegemony over the Slavic States, which were at this time threatening Byzantine interests in the Balkans. The independence of the Bulgarian and Serbian Churches was denied (although both were autocephalous) as was the right of other nations to proclaim themselves Empires. We can scarcely believe that the complete translation of the *Syntagma*, expressing these opinions, was ordered by the Tsar. Rather it expressed the aspirations and interests of the pro-Greek party in Serbia, as well as of those Byzantine citizens who had come under Serbian control after Dušan's conquests.⁵⁸ Following the appearance of the full translation in 1347–1348, work on the abbreviation of the *Syntagma* began. It should be noted that there is no Greek original of the abbreviated version in which all the chapters referring to the hegemony of Byzantium are omitted.

A second reason for undertaking the abbreviation was more practical. The abridged *Syntagma*, as part of Dušan's Code, was designed for use in the ordinary courts. For this reason most of the ecclesiastical rules were omitted and only those with secular application retained.⁵⁹

vaič 1859, reprint Athens 1966). There are three editions of the abridged *Syntagma*: Florinskiy, *Pamyatniki zakonodatelnoi dyatelnosti Dušana Tsara Serbov i Grekov*, pp. 95–203; V. Mošin, "Vlastareva Sintagma i Dušanov zakonik u Studeničkom Otečniku i Studenički palimpsest" [Blastares' Syntagma and Dušan's Law Code in Studenitsa Otečnik and Studenitsa Palimpsest"], *Starine* 42 (1949), pp. 39–93. A third edition was done by S. Novaković in a peculiar way: in the full text of his edition he marked with bold letters those articles that were part of the abridged version.

58 S. Troicki, "Crkveno-politička ideologija Svetosavska Krmčije i Vlastareve Sintagme" ["Ecclesiastical and Political Ideology of Saint Sabba's Krmčija and Blastares' Syntagma"], *Glas SANU* 212 (1953), pp. 155–206.

59 The question may be posed why the Serbian compilers took the *Syntagma* from Matheas Blastares and not the *Hexabiblos* (Ἑξάβιβλος) from Constantine Harmenopoulos (Ἀρμένοπολης), judge and *nomophylax* from Thessaloniki, which contains only secular rules. Besides, Harmenopoulos was an incomparably better lawyer than the monk Matheas Blastares. Although not a single manuscript of *Hexabiblos* is conserved in Serbia, we dispose with about 50 transcripts of the *Syntagma*. Whether it was a political or other reason for such a choice we cannot say, but some hypotheses exist. See A. Solovjev,

1.5.2 The So-called “Justinian’s Law” (БЛАГОВЕРНАГО И ХРИСТОЛЮБИВАГО ЦАРА ЁУСТИНІАНА ЗАКОН)

This was the second part of the *Codex Tripartitus*. “Justinian’s Law” was a short compilation of thirty-three articles regulating agrarian relations. The majority of these articles were taken over from the famous *Farmer’s Law* (Νόμος Γεωργικός), issued between the end of the 7th and beginning of the 8th centuries. This law had been completely translated into the Old Serbian language. Further articles were culled from the *Ecloga* (Ἐκλογὴ τῶν νόμων, lit. *Selection of the Laws*), the *Procheiron* and the *Basilika* (τα Βασιλικά). This collection also does not exist in a Greek version and so represents original work by Serbian lawyers.⁶⁰

1.5.3 Dušan’s Law Code (ЗАКОНИ БЛАГОВЕРНАГО ЦАРА СТЕФАНА)

This third and most important part of the codification was issued at councils (съборъ) held in Skoplje (or Skopje)⁶¹ on 21 May 1349 (the first 135 articles) and in

Zakonodavstvo Stefana Dušana cara Srba i Grka [Legislation of Stefan Dušan, Tsar of the Serbs and Greeks] (Skoplje 1928), pp. 76–81 = KJP 16 (Belgrade 1998), pp. 303–561, and S. Šarkić, “Zašto Sintagma a ne Hexabiblos” [“Why Syntagma and not Hexabiblos”], *Zbornik Pravnog fakulteta u Zagrebu* 40–41 (1990), pp. 73–77. On *Syntagma* see also A. Solovjev, “L’oeuvre juridique de Matthieu Blastares”, *Studi bizantini e neoellenici* 5 (1939), pp. 698–707; V. Mošin, “Vlastareva Sintagma i Dušanov zakonik u Studeničkom Otečniku i Studenički palimpsest”, pp. 7–93; J. Panev, “La réception du *Syntagma* de Matthieu Blastarès en Serbie”, *Études balcaniques* 10 (2003), pp. 27–45; V.M. Minale, “Il *Syntagma Alphabeticum* di Matteo Blastares nella codificazione dello car Stefan Dušan: alcune riflessioni di ordine cronologico”, *Atti dell’Accademia Pontaniana* 58 (2009), pp. 53–66 and “Il *Syntagma Alphabeticum*” di Matteo Blastares e lo ‘Zakonik’ di Stefan Dušan: nuove prospettive sul ‘*Syntagma*’ cd. abrégé”, *Index, Quaderni camerti di studi romanistici (International Survey of Roman Law)*, 45 (2017), pp. 187–211; V. Alexandrov, “The *Syntagma* of Matthew Blastares: The Destiny of a Byzantine Legal Code among the Orthodox Slavs and Romanians 14–17th Centuries”, *FBR* 29 (2012).

60 Edited by Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 236–240. A new edition, presented by B. Marković, *Justinianov zakon, srednjovekovna vizantijsko-srpska pravna kompilacija* [Justinian’s Law, Byzanto-Serbian Medieval Legal Compilation] (Belgrade 2007), contains the original Old Slavonic text, a translation into modern Serbian language, photographs of four manuscripts and a summary in English. In the Bulgarian National Library “Cyrill and Methodius” in Sofia, there is a copy of a legal compilation called *Soudatz* (Судатъ, “Court Law”), which represents a widespread edition of the “Justinian’s Law”, consisting of 87 articles. The text was composed either at the end of the 16th or at the beginning of the 17th century. The manuscript has a number 293 (63) in the inventory of the Library. Edited by M. Andreev and G. Cront, *La loi de Jugement, compilation attribuée aux empereurs Constantin et Justinien, versions slave et roumaine* (Bucarest 1971).

61 Modern capital of ex-Yugoslav Republic of Macedonia (North Macedonia).

Serres (Σέρραι, modern Greek Σέρρες)⁶² five years later (articles 136–201).⁶³ We know nothing about the procedure of the enactment nor regarding who were the redactors of the Code.

Although Dušan's Law Code represents an original work of Serbian legislation, many of its provisions were taken from Byzantine law, especially from the *Basilika*, a collection of laws completed c.892 in Constantinople by order of Emperor Leo VI.⁶⁴ The other sources of the Code were already promulgated

62 City in Greek Macedonia, capital of the Serres regional unit and the second largest city in the region of Central Macedonia, after Thessaloniki (population 76,817).

63 The numeration and the text of all the articles quoted in this book are according to the edition of Novaković, *Zakonik Stefana Dušana*.

64 N. Radočić pointed out, in three treatises, that about 60 articles from *Dušan's Law Code* were directly taken from the *Basilika*. See "Snaga zakona po Dušanovom Zakoniku" ["Force of Law according to Dušan's Code"], *Glas SKA*, CX, drugi razred 62 (Sremski Karlovci 1923), pp. 100–139; "Vizantijsko pravo u Dušanovu Zakoniku" ["Byzantine Law in Dušan's Law Code"], *IČ* 2 (1949–1950), pp. 10–17, and "Dušanov zakonik i vizantijsko pravo" ["Dušan's Law Code and Byzantine Law"], *Zbornik u čast šeste stogodišnjice Zakonika cara Dušana* [Essays in Honor of the Sixth Centenary of Tsar Dušan's Code] (Belgrade 1951), vol. I, pp. 45–57. On the influence of Byzantine law on Serbian mediaeval law see also R. Hube, *O znaczeniu prawa rzymskiego i rzymsko-bizantynskiego u narodów Slowianskich* [On the Meanings of Roman and Roman-Byzantine Law by Slavonic Nations] (Warsaw 1868); Croatian translation by N. Miškatović, *O znacenju prava rimskega i rimske bizantskega kod slavjanskih naroda* (Vienna 1869); French translation by the author, *Droit Romain et Gréco-Byzantin chez les peuples slaves* (Paris–Toulouse 1880); S. Novaković, "Srednjovekovna Srbija i rimske prave" ["Mediaeval Serbia and Roman Law"], *APDN* from 25.IV (1906), pp. 209–226; L. Namisłowski, "Wege der Rezeption des Byzantinischen Rechts im mittelalterlichen Serbien", *Jahrbücher für Kultur und Geschichte der Slaven*, N. F. Band 1, Heft 11, (Wrocław 1929), pp. 139–152; Solovjev, *Zakonodavstvo Stefana Dušana*; A. Solovjev, "Značaj vizantijskog prava na Balkanu" ["Importance of Byzantine Law on the Balkans"], *Godišnjica Nikole Čupića* 37 (1928), pp. 95–141; A. Solovjev, "Le droit byzantin dans la codification d'Étienne Douchan", *Revue Historique du droit français et étranger* 7 (1928), pp. 387–412; A. Solovjev, "L'influence du droit byzantin dans les pays orthodoxes", *x Congresso Internazionale di Scienze storiche, Relazione VI* (Florence 1955), pp. 599–650; A. Solovjev, "Der Einfluß des Byzantinischen Rechts auf die Völker Osteuropas", *zs-SR* 76, *LXXXIX Band der Zeitschrift für Rechtsgeschichte, Romanistische Abteilung* (1959), pp. 432–479; J.N. Ščapov (Я.Н. Шчапов) "Recepciya sbornikov vizantijskogo prava v srednevekovykh balkanskih gosudarstvach" ["Reception of Byzantine Law Miscellanies in Mediaeval Balkan States"], *VV* 37 (1976), pp. 123–129; S. Troyanos and S. Šarkić, "Ο κώδικας του Στέφανου Δουσάν και το βυζαντινό δίκαιο", in *Byzantium and Serbia in the 14th Century* (Athens 1996), pp. 248–256; L. Burgmann, "Mitelalterliche Übersetzungen byzantischer Rechtstexte", in *Antike Rechtsgeschichte, Einheit und Vielfalt. Österreichische Akademie der Wissenschaften, Philosophisch-historische Klasse, Sitzungsberichte*, 726. Band, ed. G. Thür (Vienna 2005), pp. 43–66, especially pp. 58–66; V.M. Minale, "Lo 'zakonik' di Stefan Dušan e i suoi legami con la legislazione bizantina", *Index* 37 (2009), pp. 219–228; P. Angelini, "L'influenza del diritto criminale bizantino nel Codice di Dušan 1349–1354", *Byzantina Symmeikta* 21 (2011),

charters (from which were taken numerous rules concerning the social position of the nobles and villeins) and the treaties with Dubrovnik (from which were taken the provisions concerning the privileges of the merchants). The intention of the legislator was to neglect completely the customary law, but still some influence of customs is reflected in the Code.

Dušan's Law Code treats the law of persons, the constitutional law, the penal law and the legal proceedings. The rules concerning the law of property, the law of wills and successions, and the law of obligations are very rare in the code. Those provisions were mostly regulated by the *Syntagma* of Matheas Blastares and the so-called "*Justinian's Law*". The system of Dušan's Law Code does not correspond to modern codifications.⁶⁵ A certain harmony can be noticed only for the first eighty-three articles. Articles 1–38 concern the Church and clerics;⁶⁶ the privileges of the noblemen are regulated in articles 39–63, while the social position of the villeins (*sebri, сеєри*) in articles 64–83. From article 84 of the Code onwards (articles 84–201), no regularity or system can be recognized.

The first group of articles regulates the legal position of the Church, with the intention of ensuring the purity of the faith and securing political power of the Church. Clergymen were exempted from secular jurisdiction, only religious marriage was to be allowed, and the punishments against heresies and for being contrary to the influence of Roman Catholic Church were prescribed. However, canon law was much more represented in the *Nomokanon* of Saint Sabba and in the *Syntagma* of Matheas Blastares. Dušan's Law Code does not repeat the provisions contained in the *Nomokanon* and *Syntagma*, but can be seen as their supplement, sometimes making them more strict.

The second group of articles treats the rights and obligations of noblemen and villeins. The Code unifies the legal status of all social classes and guarantees the privileges of noblemen, either Serbian or Byzantine (in the regions

pp. 217–253; S. Šarkić, "Uticaj vizantijiskog prava na srednjovekovno srpsko pravo" ["The Influence of Byzantine Law on Serbian Medieval Law"], *Slovène, International Journal of Slavic Studies, Institute for Slavic Studies of the Russian Academy of Science* (2015), pp. 106–118.

⁶⁵ D. Mijušković, "Sistem Dušanovog zakonika" ["System of Dušan's Law Code"], *Srpski preged*, nos 4, 5 and 6 (1895), tried to find the system of the *Code*, but eventually had to admit that strict rules did not exist.

⁶⁶ It might be the influence of Byzantine law since the first book of the *Justinian's Code* begins with 13 titles concerning ecclesiastical law, under the title *De summa trinitate et de fide catholica et ut nemo de ea publice contendere audeat* (*Cod. Iust. 1, 1–13*). Editors of the *Basilika* translated this heading as Περὶ τῆς ἀνώτατω τριάδος καὶ πίστεως καθολικῆς καὶ περὶ τοῦ μηδένα τολμᾶν περῆ αὐτῆς δημοσίως ἀμφισβητεῖν (*Basilicorum libri LX, libri 1, titulus 1*, ed. H.J. Scheltema, N. Van Der Wal, and D. Holwerda [Gröningen 1953], p. 1).

conquered from Byzantium), or hereditary estate holders and fief holders (*pronoia*). The hereditary estate holders had a full and unlimited right on their manor (*baština*, **баштина**). The lord, who was the hereditary estate holder, could freely dispose of his property: sell it, give it as a present, or alienate in any other way. The Emperor could deprive the hereditary estate holder of his manor only in a case of high treason. On the other hand, a fief (*pronoia*) was land held by military tenure and could be succeeded only in the case when a fief holder's heir accepted the military service. A fief remained always in the Tsar's *dominium*, and its tenant had no right of ownership, and could not sell it or alienate it in any other way. Through article 139 of the Code,⁶⁷ Tsar Dušan wanted to protect the villagers from the abuses of the Church and noblemen. The main reason was, probably, a deficit of manpower.

In the matter of criminal law, Dušan's Law Code accepted the Byzantine concept of a crime. Serbian 13th-century law treated a crime as a private blood feud, in which a family seeks to avenge one of their members on the offender or his family. Dušan's Law Code changes this and treats a crime or public offence as an act committed or omitted in violation of a law. However, a crime is not only the trespass of secular law, but is also a sin, i.e. violation of divine law. The Code established a rigorous Byzantine system of punishment that was attenuated by the existence of the right of asylum.

According to the feudal system of the society, Dušan's Law Code provides different courts for all social classes. The jury system (*porota*, **порота**, from Old Serbian word *rota*, oath) provides for the reference of the dispute to assessors of equal rank with the litigants, and to the empanelling in the proportion of half and half to represent each party. The *porota* was not a jury in the English sense of the word today, as it was used in civil but not in criminal cases. Also, it did not merely give verdicts, but actually tried cases. It had, in fact, judicial functions. Dušan retained a judge attached to his Imperial Court of Justice (*sudije carstva mi*) to try cases actually arising there. The Imperial Court had to judge noblemen, the inhabitants of the Tsar's manors and towns, and all commoners for so-called "Imperial cases" (*carski dugovi*), such as *nevera* (treason), *provod* or *prejem ljudski* (helping a serf to flee anywhere from his lord), *vražda* (murder, homicide), *krv* (lit. "blood", i.e. wounding), *konj* or *svod konjski* (stealing of a horse), *zemlja* (lit. "land", i. e. disputes arising over land), *tat* (thief) and *gusar* (brigand).⁶⁸

⁶⁷ On article 139, see Chapter 5.

⁶⁸ For more details see chapters dedicated to criminal law and legal proceedings.

The fundamental intention of Dušan's Law Code was that all social relations must be regulated by law. Law is above the Emperor. In article 78 the Tsar places the written law above any deeds or gift or title issued by him, but only in connection with disputes over land, where the Church is involved. In article 105, where his writs clash with the law, the judges have instructions to refer the matter back to him. However, articles 171 and 172 provide that judges have to judge according to the Code, and not through fear of the Tsar.

The original text of the Code has not survived, but we do have twenty-six transcripts.⁶⁹ The oldest is Struga's⁷⁰ manuscript from about 1395. The text is very demaged, and it has only 104 articles, without the beginning and the end. From the beginning of the 15th century we have the transcript from Athos (Αθως),⁷¹ which contains 173 articles. The largest version is that from Prizren (end of the 15th century; 186 articles, with the break on the last article), which was used by Stojan Novaković as the basis for his edition of the Code. Among the later transcripts, the most important is the manuscript from Rakovac⁷² from 1700, containing fifteen articles that could not be found in any other transcript.⁷³

⁶⁹ It could be possible that the number of transcripts will increase. In 1851, Šafarik knew of only 10 copies; Florinskiy, in 1888, had 17 transcripts and Novaković in 1898, when he was preparing his edition, knew 20 copies.

⁷⁰ Struga (Macedonian Cyrillic *Cmpyea*) is a town in the southwestern region of North Macedonia, lying on the shore of Lake Ohrid (population 16,559).

⁷¹ Mountain and peninsula in northeastern Greece and an important centre of Eastern Orthodox monasticism.

⁷² Serbian Cyrillic *Rakovac*, small village and monastery on the right bank of Danube, near Novi Sad (*Нови Сад*), second largest town in Serbia and the capital of the province of Vojvodina (*Војводина*).

⁷³ On the transcripts of Dušan's Law Code, see M. Bartoš, "Zbornik rukopisa Zakonika cara Stefana Dušana (1349. i 1354. godine)" ["Collected Manuscripts of Dušan's Law Code, 1349 and 1354"], in *Zakonik cara Stefana Dušana, Struški i Atonski rukopis* [The Law Code of Stefan Dušan, Manuscripts of Athos and Struga] (Belgrade 1975), pp. 1–23; A. Solovjev, *Zakonik cara Stefana Dušana 1349. i 1354. godine* [The Law Code of Stefan Dušan 1349 and 1354] (Belgrade 1980), pp. 37–149; D. Bogdanović, "Rukopisi Dušanovog zakonika" ["Manuscripts of Dušan's Law Code"], in *Dušanov zakonik, ssk, knjiga 8* [Dušan's Law Code, Old Serbian Literature, Book 8] (Belgrade 1986), pp. 101–108; Đ. Bubalo, "Rukopisi Dušanovog zakonika" ["Manuscripts of Dušan's Law Code"], in *Dušanov zakonik* [Dušan's Code] (Belgrade 2010), pp. 25–63 and Đ. Bubalo, "Ogled iz istorije teksta Dušanovog zakonika, *Rukopisno okruženje*" ["A Prolusion on the History of the Text of Dušan's Code"], *ZRV* 50/2 (2013), pp. 725–740. The Serbian Academy for Science and Art (*Српска Академија Наука и Уметност*) published all transcripts of Dušan's Law Code in four volumes: the manuscripts of Struga and Athos (vol. I, Belgrade 1975); the manuscripts of Studenica, Hilandar, Hodoš and Bistritza (vol. II, Belgrade 1981); the manuscripts of Baranja, Prizren, Šišatovac, Rakovac, Ravanitza and Sofia (vol. III, Belgrade 1997); the manuscripts of Pat-

Since 1795, when Dušan's Law Code, according to Tekelija's⁷⁴ manuscript, was for the first time published, as the appendix of the volume IV of Jovan Rajić's⁷⁵ *History of Various Slavonic Peoples, Particularly Bulgarians, Croats and Serbs*,⁷⁶ translations of the Code into other languages started to appear. To the present day we dispose with several translations into different languages, such as German,⁷⁷ French,⁷⁸ Polish,⁷⁹ Russian,⁸⁰ Romanian,⁸¹ English,⁸² Slovenian,⁸³ Greek,⁸⁴ Italian⁸⁵ and modern Serbian.⁸⁶

riarchate, Bordoških, Popinci, Tekelija, Sandić, Kovilj, Belgrade, Reževići, Karlovci, Vršac, Grbalj, Bogišić and Jagić (vol. IV, Book 1–2, Belgrade 2015). The best edition of the Code is considered Novaković, *Zakonik Stefana Dušana*. Scholars also use the edition of N. Radočić, *Zakonik cara Stefana Dušana 1349 i 1354* [The Code of Tsar Stefan Dušan 1349 and 1354] (Belgrade 1960). See also the latest edition of the Code: Bubalo, *Dušanov zakonik*.

- 74 Sava Tekelija (Serbian Cyrillic *Сава Текелија*, Hungarian *Száva Thököly*, 1761–1842) was among the first Serbs to have defended a doctoral thesis in jurisprudence (1786, University of Pest). He came from a famous Serb family of noblemen in Habsburg Monarchy. As a rich merchant and philanthropist he founded in Pest the Collegium Tökolyanum, for Serbian students studing in the city. Tekelija was the patron of Matica Srpska, first Serbian scientific society, founded in Pest in 1826 and transferred in 1864 to Novi Sad.
- 75 Jovan Rajić (Serbian Cyrillic *Јован Пажућ*, 1726–1801) was forerunner to modern Serbian historiography.
- 76 J. Rajić, *Istoria raznih slavenskih narodov, naipače Bolgar, Horvator i Serbor* (Vienna 1794–1795). Dušan's Law Code was added by Stefan Novaković as editor of the book (vol. IV, pp. 242–270).
- 77 The first translation into German, according to the Tekelija's manuscript, was done by F.Ch. Engel and inserted in his book *Geschichte des Ungarischen Reiches und seiner Nebenländer. T. II. Geschichte von Servien und Bosnien* (Halle 1801), pp. 293–310. Using the transcripts of Rakovac and Hodoš, P.J. Šafarik made a better translation of the Code and sent it to Polish scholar A. Kucharski, who published it in his work *Antiquissima monumenta juris slovenici* (Warsaw 1838), pp. 92–226. Twenty years later W.A. Maciejowski in vol. VI of his *Historia prawodawstw słowiańskich* [History of Slavic Laws] (Warsaw 1858), pp. 305–385 made a new translation in German and in Polish. P.J. Šafarik also did another translation in German and published it in his book *Geschichte der südslavischen Literatur. III. Das serbische Schriftthum. Aus dessen handschriftlichen Nachlasse herausgegeben von J. Jireček* (Prague 1865), pp. 50–56. The most recent translation into German, according to the edition of S. Novaković, was done by J. Gerassimovitsch, *Duschans Gesetzgebung. Verfassungsurkunde des serbischen Kaiserreiches* (Bonn am Rhein 1912).
- 78 Using Engel's German text of the Code, A. Boué made the first translation into French, which was published in his book *La Turquie d'Europe. T. IV* (Paris 1840), pp. 426–441. Much better (according to Novaković's edition) was the translation of P. Lebl, *Le Code Douchane, Étude sur l'histoire du droit public serbe* (Paris 1912), pp. 30–69. The manuscript from Athos was translated by Jeanne Milovanović, *Code de l'empereur Douchan, le manuscrit de l'Athos, in Zakonik cara Stefana Dušana, struški i atonski rukopis* (Belgrade 1975), pp. 223–250.
- 79 Beside Maciejowski's translation (see note 76), we have one more into Polish done by S. Borowski, *Materiały dla ćwiczeń seminaryjnych z historji praw słowiańskich. Zeszyt I. Statuty cara Stefana Duszana z lat 1349. i 1354* (Warsaw 1934).

The question of how Dušan's Law Code was applied cannot be precisely solved. The problem lies in the lack of additional, relevant legal sources (verdicts) that could serve as evidence.⁸⁷

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- 80 The first translation into Russian was done by Filaret, Archbishop of Chernigov (Russian *Черниговъ*, Ukrainian *Чернігів*, today in northern Ukraine) in his book *Sacred Thing of South Slavs* (*Svjatyje Južnich Slavyan*, vol. II [Chernigov 1865], pp. 68–74). Archbishop Filaret translated only 31 articles, i.e. the provisions regarding the Church, using the text of the Code from Rajić's *History*. A few years later, E.E. Golubinskiy, in his *History of Orthodox Churches of Bulgarians, Serbs and Roumanians or Moldo-Walachians* (*Kratkii očerk istorii pravoslavnih cerkvei bolgarskoy, serbskoy i ruminskoy ili moldo-valašskoy* [Moscow 1871]) translated 61 articles concerning the Church (pp. 681–689), using Šafarik's edition. A complete translation, according to the manuscript of Prizren and 24 articles from the transcript of Rakovac, was done by F. Zigelj, *Zakonnik Stefana Dušana* (Saint Petersburg 1872), pp. 9–115. The translation of the manuscript of Prizren, by M. Petković, could be found in vol. III of the editions of the Serbian Academy for Science (Belgrade 1997, pp. 433–462).
- 81 A very good translation by J. Peretz, *Zaonicul lui Štefan Dušan țarul Serbiei 1349. și 1354. Partea I* (Bucharest 1905).
- 82 An excellent translation, according to Novaković's edition was done by M. Burr, "The Code of Stephan Dušan Tsar and Autocrat of the Serbs and Greeks", *The Slavonic and East European Review*, 70, 28 (1949), pp. 198–217; 71, 28 (1950), pp. 516–539. Although Malcolm Burr was a botanist, he served as an officer in the British intelligence services in Serbia during the First World War, and became attached to Serbian history. His translation was improved by Aleksandar Solovjev, a great Serbian specialist (of Russian origin) in legal history. Đurica Krstić translated the manuscript of Bistritza in vol. II of Serbian Academy's editions (Belgrade 1994, pp. 235–262).
- 83 An excellent translation by M. Dolenc, *Dušanov zakonik. primerjalni prikaz pravnih razmer po Dušanovem zakoniku in po istodobnem germanskem pravu s posebnim obzirom na Slovence* (Ljubljana 1925), pp. 176–200.
- 84 Λ. Χατζηπροδομίδη, *Στέφανος Δουσάν, αυτοκράτορας Σερβίας και Ελλάδας. Ο κώδικας νόμων* (Athens 1983). The translation was done according to the manuscript of Athos.
- 85 P. Angelini, *Il Codice di Dušan 1349–1354. Legislazione greco-romana e amministrazione dell'impero serbo-bizantino*, Storia del diritto e delle istituzioni, Studi 14 (Rome 2014), pp. 157–190.
- 86 The first translation into the modern Serbian language was done by D. Pantelić in *Sudski list I* (Belgrade 1869), pp. 22–27 and 37–39. The author translated only 19 provisions regarding the Church. Today we dispose with two excellent translations in the editions of N. Radojić and Đ. Bubalo (see note 72). For more details on translations of the Code, until the year 1980, see Solovjev, *Zakonik cara Stefana Dušana*, pp. 33–35.
- 87 See S. Šarkić, "The Application of Dušan's Code according to the Chronicle of Ioannina", in *KATEYODION in memoriam Nikos Oikonomides*, FBK, Athenener Reihe, ed. Spyros Troianos (Athens—Komotini 2008), pp. 161–171. A bibliography of the works concerning the Law Code of Stefan Dušan was recently made by G. Radojić-Kostić, *Bibliografija o zakonodavstvu cara Stefana Dušana* [Bibliography of Emperor Stefan Dušan's Legislation] (Belgrade 2006) (enlarged edition at <http://monumentaserbica.com/dz/>, 25.10.2012).

1.6 *Law of Mines of Despot Stefan Lazarević*

The Law of Mines (*Zakon o rudnicima*, *Законикъ благочестываго и христолюбиваго иже въ царех Стефана деспota. въ цеховѣ, и въ бацинах. и въ вѣрѣ, и въ колѣвѣ. и въ всакыхъ потрѣбныхъ сѣдовѣх*) was promulgated in 1412 by Stefan Lazarević with the intention of regulating the legal position of German miners (so-called *Sasi*, i.e. Saxons) living and working in Novo Brdo,⁸⁸ the most important mine-city in mediaeval Serbia. The text of the law was composed by twenty-four miners, who were not working in Novo Brdo. Despot Stefan gave it a legal power with his signature and seal. As the majority of the workers in the mine were of German origin, the text contained a lot of German words, extremely changed in Serbian, to the extent of being practically impossible to recognize. After the Turkish conquest of Novo Brdo, the law was translated into Turkish and later applied.⁸⁹

1.7 *Serbian Translation of the Farmer's Law (Закон дѣлательни избрани ѿтъ книги цара Йустиниана)*

In the archives of the monastery of Hilandar the manuscript of the Serbian translation of the famous Farmer's Law (*Νόμος Γεωργικός*) can be found. It is possible that the translation was done during the reign of Tsar Dušan, but the transcript that we dispose with was written between 1426 and 1432. Probably, the Farmers Law regulated the agrarian relationships on the monastery lands.⁹⁰

88 Novo Brdo (Serbian Cyrillic *Ново Брдо*, Albanian *Novo Bërdë* or *Artanë*, from Latin *Novus Mons* and *Nyeubergh* in Saxon texts) is today a town in the Priština district of eastern Kosovo.

89 Edited by N. Radojičić, *Zakon o rudnicima despota Stefana Lazarevića* [Law of Mines of Despot Stefan Lazarević] (Belgrade 1962). A translation into modern Serbian with commentaries was done by B. Marković, *Zakon o rudnicima despota Stefana Lazarevića* [Law of Mines of Despot Stefan Lazarević], Spomenik SANU CXXVI (Belgrade 1985). A Turkish translation was published by N. Beldiceanu, *Les actes des premiers sultans conservés dans les manuscrits turcs de la Bibliothèque nationale à Paris II* (Paris–The Hague 1964), pp. 245–254. The Latin-alphabet transliteration of the Code, done in 1638 in the Bulgarian town of Ćiprovac, has been recently edited by S. Ćirković, *Latinički prepis Rudarskog zakonika despota Stefana Lazarevića* [The Latin-Alphabet Transliteration of Despot Stefan Lazarević's Mining Code], Serbian Academy of Sciences and Arts, Department of Social Sciences, Sources of Serbian Law LX (Belgrade 2005). Cf. S. Šarkić, "Les traces du droit médiéval serbe dans les sources juridiques turques", *Slovenian Law Review* 6.1–2 (December 2009), pp. 137–142.

90 Edited with commentaries by Radojičić, D. Sp., "Srpski rukopis Zemljoradničkog zakona" ["Serbian Manuscript of the Farmer's Law"], *ZRVI* 3 (1955), pp. 15–28. The new edition by M. Blagojević, *Zemljoradnički zakon, srednjovekovni rukopis* [Agricultural Law, Medieval Manuscript], Serbian Academy of Sciences and Arts, Department of Social Sciences,

1.8 *City Statutes*

In mediaeval Serbia there were no autonomous cities, and the citizenry was not an autonomous class (*tiers état*), like it was in the Occidental European countries. Only the cities on the Adriatic coast has some kind of autonomy, which was confirmed in their city-statutes. Among the city-statutes there survive only two: the Statute of Kotor⁹¹ and the Statute of Budva.⁹² The Statute of the city of Skadar also has some importance for Serbian mediaeval law.⁹³

The city of Kotor was part of the Serbian mediaeval State from 1186 until 1370 and during this time enjoyed a large degree of autonomy. The oldest provisions in its Statute, written in Latin, are from the year 1301, where the relationship with Serbian monarchs is precisely determined.⁹⁴

The original Latin text of Budva's Statute from the 14th century has not survived. Instead we only have an Italian translation from the end of the 17th century. This document shows us that the autonomy of Budva was lesser than that of Kotor.⁹⁵

The Statute of Skadar (*Statuta Scodrae*) was written in the mediaeval Italian language, and it seems that it was composed in the first part of the 14th century (more precisely before 1346, when Stefan Dušan took the title of Tsar), when Skadar was a part of the Serbian mediaeval State.⁹⁶ Chapter 274 of the Statute,

Sources of Serbian Law XIV (Belgrade 2007), contains the Old Slavonic text, a translation into modern Serbian, and detailed comments and photographs of the manuscript.

91 Kotor (Serbian Cyrillic *Komop*, Italian *Cattaro*, Latin *Catharus* or *Ascrivium*) is a coastal town in Montenegro. It is located in a secluded part of Kotor Bay (Boka Kotorska). The city has a population of 13,510.

92 Budva (Serbian Cyrillic *Будва*, Italian *Budua*, Ancient Greek *Βούδονα*) is a Montenegrin town on the Adriatic Sea. The *Budva riviera* is the centre of Montenegrin tourism today. The city has a population of 15,915.

93 Skadar (Latin *Scodra*, Serbian Cyrillic *Скадар*, Albanian *Shkodër*, Italian *Scutari*, Turkish *İskodra* or *Arnavut İskenderiyesi*) is a city in the Republic of Albania, and it is the capital of the surrounding county of Shkodër. The city has a population of 135,612.

94 *Statuta et leges civitatis Cathari* (Venice 1616). The new edition *Statuta civitatis Cathari, Statut grada Kotora* [Statutes of the City of Kotor], vols I-II (Kotor 2009), contains a reprint of the original Latin text from 1616 (vol. I) and a translation into modern Serbian by a group of authors (vol. II).

95 Edited by S. Ljubić, *Statuta et leges civitatis Buduae, civitatis Scardonae, et civitatis Lessiniae*, MHSJM, pars I, vol. III (Zagreb 1882–1883). The Statute was translated into Serbian by N. Vučković, *Srednjovekovni statut grada Budve* [Mediaeval Statute of the City of Budva] (Budva 1970). The new edition of the Statute, *Statut Budve* [Statute of Budva], edited by N. Luketić and Ž. Bujuklić (Budva 1988), contains the Italian text of Ljubić's edition and Vučković's translation.

96 Edited by L. Nadin, *Stattuti di Scutari della prima metà del secolo XIV con le addizioni fino al 1469, a cura Lucia Nadin, traduzione in Albanese a cura di Pellumb Xhufi, con*

under the title *Del pesce tocha al conte et pagar d'altre mercantie* ("On fishes that belong to the Count and payment of other goods"), represents the translation of Tsar Dušan's charter issued to the city of Skadar between 1346 and 1355. A Serbian version of the text has not survived, but the Italian translation was incorporated into the Statute on 10 May 1393, after the establishment once again of Venetian power in the city (1392).⁹⁷

Although the City Republic of Dubrovnik (Ragusa) never belonged to the Serbian mediaeval State, its Statute⁹⁸ is an important source for the Serbian mediaeval law. Most important are the provisions concerning judicial trials among Serbs and Ragusans.

2 Other Sources

2.1 Hagiographies and Annals

Some literary sources have importance for legal history, such as hagiographies⁹⁹ and annals. As these texts are the object of literary studies we shall present them at a glance.¹⁰⁰

saggi introduttivi di Giovan Battista Pellegrini, Oliver Jens Schmitt e Gherardo Ortalli, Viella (Rome 2001). The book has been published as the 15th in the edition Corpus statutarum delle Venezie. On the basis of L. Nadin's edition, N. Bogojević-Gluščević prepared a Serbian edition, with a translation into modern Serbian: *Statut grada Skadra iz prve polovine XIV vijeka sa dodacima završno sa 1461. godinom* [The Statute of the City of Skadar from the First Part of the 14th Century with the Additions Till the Year 1461] (Podgorica 2016).

97 The charter was edited by S. Ćirković, "Prevod povelje cara Stefana Dušana gradu Skadru" ["Translation of Tsar Dušan's Charter to the City of Skadar"], ssa 6 (2007), pp. 113–121.

98 Edited by V. Bogišić and K. Jireček, *Liber statutorum civitatis Ragusii, compositus anno 1272*, MHJSM, vol. IX (Zagreb 1904). The new edition *Statut grada Dubrovnika, sastavljen godine 1272* [Statute of the City of Dubrovnik, Composed AD 1272] (Dubrovnik 2002), contains the Latin text on the basis of Bogišić and Jireček's edition, translation into modern Croatian done by A. Šoljić, Z. Šundrica, and I. Veselić, and an introduction by N. Lonza.

99 Modern term for the genre of Byzantine literature whose aims were the veneration of the saint and the creation of an ideal of Christian behaviour as well as documentation and entertainment.

100 For more details on Serbian mediaeval literature, see Šafarik, *Geschichte der südslavischen Literatur*, III; V. Jagić, *Historija književnosti naroda hrvatskoga i srpskoga, knjiga prva, Staro doba* [History of the Literature of Croatian and Serbian People, Book One, The Old Epoch] (Zagreb 1867); M. Kašanin, *Srpska književnost u srednjem veku* [Serbian Literature in the Middle Ages] (Belgrade 1975); St. Hafner, *Serbisches Mittelalter. Altserbische Herrscherbiographien* (Graz–Vienna–Cologne 1976), and especially D. Bogdanović, *Istorija stare srpske književnosti* [History of Old Serbian Literature] (Belgrade 1980, second edition 1991).

The oldest annalistic work in Serbian literature is the Latin translation of so-called *Annals of the Priest from Diokleia* (see above), while Serbian hagiographies appear from the early 13th century with the literary activity of King Stefan Nemanjić and his brother Archbishop Sava (Saint Sabba).

Saint Sabba is considered the real founder of Serbian mediaeval literature. Among the numerous works that he wrote, the most important for legal history is the biography of his father Stefan Nemanja (written 1208), under the title *The Life of Saint Simon (Žitije Svetog Simeona)*.¹⁰¹ Sabba pointed out the monastic life of Nemanja, after his abdication, when he became a monk with the name Simon (Simeon, Симеон). The historical facts about Nemanja's life are neglected in order to advance the idea of rejecting the throne and power in life on Earth for the benefit of the Kingdom of Heaven.

In 1216, Sabba's elder brother, the first Serbian King Stefan, also wrote a *Life of Saint Simon*.¹⁰² This hagiography is a very important historical source, because Stefan gives many facts about the life of his father, before his departure to the Holy Mountain. The hagiography contains the story of seven miracles that Saint Simon (Nemanja) made, though these are without historical basis.

Domentian (Доментијан), monk from the Holy Mountain and pupil of Saint Sabba, wrote two hagiographies concerning the lives of Stefan Nemanja and Saint Sabba.¹⁰³ Saint Sabba's biography was written between 1243 and 1254, on the demand of the King Uroš I. Later on (1264), on the demand of the King Uroš as well, Domentian wrote a hagiography of Saint Simon (Stefan Nemanja), using not only the Serbian sources and his personal experience, but some Russian historical works as well.

Theodosios (Теодосије), the younger Domentian's contemporary, is the author of another hagiography of Saint Sabba.¹⁰⁴ The text was written in the

¹⁰¹ Editions: Čorović, *Spisi Svetog Save*, pp. 151–175; T. Jovanović, *Sveti Sava, Sabrana dela* [Saint Sabba, Complete Works] (Belgrade 1998), pp. 147–191.

¹⁰² Edited by V. Čorović, “Žitije Simenona Nemanje od Stefana Prvovenčanog” [“The Life of Simon Nemanja by Stefan the First Crowned”], *sz* 2 (1938), pp. 1–76. The new edition with the translation into modern Serbian was done by Jovanović and Juhas-Georgijevska, *Stefan Prvovenčani, Sabrana dela*, pp. 14–107.

¹⁰³ Edited by D. Daničić, *Domentijan, Život sv. Simeona i sv. Save* [Domentian, Life of St. Simon and St. Sabba] (Belgrade 1865). A new edition of the Life of Saint Sabba was done by T. Jovanović, *Domentijan, Žitije Svetog Save* [Domentian, Life of Saint Sabba] (Belgrade 2001).

¹⁰⁴ Edited by Đ. Daničić, *Život sv. Save, napisao Domentijan* [Life of St. Sabba, Written by Domentijan], (Belgrade 1860). Daničić wrongly thought that the author of this hagiography was Domentian and not Theodosios. A new edition *Teodosije Hilandarac, Život Svetoga Save* [Theodosios from Hilandar, Life of Saint Sabba], has been carried out by Đ. Trifunović, on the basis of Daničić's edition (Belgrade 1973).

monastery of Hilandar at the end of the 13th century. The main source for Theodosios' is the work of Domentian, but he made many changes in content and style, so that one can speak of an original work.

The Lives of the Serbian Kings and Archbishops by Archbishop Danilo II is one of the most important historical sources.¹⁰⁵ Its author is a very well-known person in Serbian history. Born about 1270 as a nobleman, he started his career as a courtier of King Milutin, but soon became a monk. He spent most of his monastic life in Hilandar, and from 1324 until his death in 1337 he was the Archbishop of the Serbian Church.¹⁰⁶ He described the lives of King Uroš I, King Dragutin, Queen Helen,¹⁰⁷ King Milutin and the Archbishops Arsenios I, Ioanikios I and Eusthatios I. Two anonymous authors, known as "Danilo's continuators", completed his work. The first of them wrote hagiographies of King Stefan Dečanski, King Dušan and Archbishop Danilo II. The miscellany was completed after 1375 by the "second continuator" with the biographies of the first, second and third Serbian Patriarchs—Ioanikios, Sabba and Ephraim.

Gregory Tzamblak (Григорије Цамблак), who came to Serbia from Bulgaria, probably in 1402, and stayed until 1406 as the superior (hegoumenos, ἡγούμενος, fem. ἡγουμένισσα) of the monastery of Dečani, wrote a hagiography of King Stefan Dečanski.¹⁰⁸

An anonymous author wrote the first Serbian genealogy between 1374 and 1377. This short text, under the title *Short History of the Serbian Rulers* (*Kratka istorija vladara srpskih*), exposes facts about the origin of the Serbian dynasty. The purpose of the first Serbian genealogy was to confirm the legitimacy of the Bosnian rulers (ban, Serbian Cyrillic *бан*) Tvrtko Kotromanić's (Твртко Котроманић) pretensions on the royal crown.¹⁰⁹ In the 15th and 16th centuries, the

¹⁰⁵ Edited by Đ. Daničić, *Životi kraljeva i arhiepiskopa srpskih, napisao Arhiepiskop Danilo i drugi* [The Lives of the Serbian Kings and Archbishops, Written by Archbishop Danilo and Others] (Zagreb 1866, reprint London 1972).

¹⁰⁶ On Danilo II (Serbian Cyrillic *Данило*) see the miscellany from the international meeting to mark the 650th anniversary of his death: *Arhiepiskop Danilo II i njegovo doba* [Archbishop Danilo II and his Epoch] (Belgrade 1991).

¹⁰⁷ Helen of Anjou (French *Hélène d'Anjou*, Serbian Cyrillic *Јелена Анжујска*) was the spouse of King Stefan Uroš I. Her children were the later Kings Stefan Dragutin and Stefan Milutin.

¹⁰⁸ Edited by J. Šafarik, "Žitije Stefana Dečanskog" ["The Life of Stefan Dečanski"], *Glasnik DSS* 11 (1858), pp. 35–94. New edition by A. Davidov, G. Dančev, N. Dončeva-Panayotova, P. Kovačeva, and T. Genčeva, *Žitije na Stefan Dečanski ot Grigorij Tzamblak* [The Life of Stefan Dečanski by Grigorij Tzamblak] (Sofia 1983).

¹⁰⁹ In 1377 the Bosnian *ban* Tvrtko Kotromanić took the royal title. He was crowned in the monastery of Mileševa (Милешева, in southern Serbia) with "the crown of Saint Sabba", so he emphasized his pretensions on the throne of Nemanjić's dynasty, because the Emperor

source got a new redaction with facts concerning the reign of the last Serbian Despots from the families Lazarević, Branković and Jakšić.

The first Serbian annals cover the years 1350–1360, and they are written under the influence of Byzantine chronographies.¹¹⁰ Among the Byzantine chronographies translated in Serbia, the most important is the translation of John Zonara's historical work. The translation was done probably in the beginning of the 14th century, in the time of King Milutin, but we dispose today with a later transcript, done on the demand of Despot Stefan Lazarević. The Serbian version is known under the title *Paraleipomen* (Παραλειπόμεν), and it was done in 1407 or 1408 by the monk Gregory of Hilandar.¹¹¹

The hagiography of Despot Stefan Lazarević was written between 1433 and 1439 by the Bulgarian scholar Constantine the Philosopher (Константин Философ).¹¹² Constantine came to Serbia in 1410 and became a “teacher” at the Despot's court in Belgrade. Describing the life of Despot Stefan, Constantine the Philosopher compares his hero not only with biblical personalities (as was usual in mediaeval hagiographies), but with heros from Greek antiquity as well. We could say that Constantine's model was Plutarch's biography of Alexander the Great.

One of the most unusual books from Serbian mediaeval literature is *Memoirs of a Janizary* by Constantine Mihajlović (Константин Михајловић). A Serbian soldier, captured by the Turks when they conquered the city of Novo Brdo (1455), Constantine converted to Islam, became a janizary and participated in many battles with the Turkish army. In about 1463 he was captured by the Hungarians, turned back to Christianity, and spent the rest of his life (he died after 1501) in Hungary and Poland. Between 1497 and 1501 he wrote his *Memoirs* as some kind of memorandum addressed to the Polish King John I Albert (Polish *Ian i Olbracht*), inviting him to start a crusade against the Turks. Constantine's work is a very precious historical source, from an author who was

Uroš died 1371 without successor. Tvrtko's grandfather, Bosnian *ban* Stefan was married to the King's Dragutin daughter Elisabeth (Јелисавета).

¹¹⁰ The genealogies and annals are edited by Lj. Stojanović, *Stari srpski rodoslovi i letopisi* [Old Serbian Genealogies and Annals] (Belgrade–Sremski Karlovci 1927).

¹¹¹ Edited by A. Jakobs, *Zωναρας—Zonara. Die byzantinische Geschichte bei Joannes Zonaras in slawischer Übersetzung* (Munich 1970).

¹¹² Edited by V. Jagić, “Konstantin Filozof i njegov život Stefana Lazarevića” [“Constantine the Philosopher and his Life of Stefan Lazarević”], *Glasnik SUD* 42 (1875), pp. 223–328. A new edition was published in Bulgaria in the late twentieth century by K. Kuev and G. Petkov, *Sbrani sčinenija na Konstantin Kostenečki* [Complete Works of Constantine Kostenečki] (Sofia 1986), pp. 314–515. Cf. N. Radošević, “Laudes Serbieae. The Life of Despot Stefan Lazarević by Constantine the Philosopher”, *ZRVI* 24/25 (1986), pp. 445–451.

a Christian who lived and fought for eight years in Turkey. The original text, written in Serbian, does not survive, but we have today many transcripts of the Polish translation.¹¹³

2.2 *Inscriptions*

The Serbian scholar Ljubomir Stojanović¹¹⁴ made a collection of Old Serbian inscriptions.¹¹⁵ Some of them have legal contents and great importance for legal history. Some inscriptions with historical content on a wall paintings (vol. I covers 12th–13th centuries) were recently published by the Byzantine Institute of Serbian Academy of Sciences and Arts.¹¹⁶ However, this collection does not have any great importance for legal history.

¹¹³ Edited by Đ. Živanović, *Konstantin Mihajlović iz Ostrovice, Janjičarove uspomene* [Constantine Mihajlović from Ostrovitza, Memoirs of a Janizary], Spomenik SANU 107 (Belgrade 1959), pp. 1–170 = ssK, knjiga 15 (Belgrade 1986).

¹¹⁴ Ljubomir Stojanović (Serbian Cyrillic *Љубомир Стојановић*, 1860–1930) was a distinguished Serbian statesman, politician, philologist, professor at the High School (later University) of Belgrade and member of the Serbian Royal Academy.

¹¹⁵ Ij. Stojanović, *Stari srpski zapisi i natpisi* [Old Serbian Notes and Inscriptions], I–VI (Belgrade 1902–1919, reprint Belgrade 1982–1988).

¹¹⁶ *Naptisi istorijske sadržine u zidnom slikarstvu*, tom prvi XII–XIII vek, Gojko Subotić, Bojan Miljković, Irena Špadijer, Ida Tot, urednik Ljubomir Maksimović, Vizantološki institut Srpske Akademije Nauka i Umetnosti, izvori, knjiga prva (*Inscriptiones historicae in picturis muralibus*, tomus primus saeculorum XII–XIII, Gojko Subotić, Bojan Miljković, Irena Špadijer, Ida Tot, recensuit Ljubomir Maksimović, Institutum Byzantinum Academiae Serbicae Scientiarum et Artium, fontes liber primus) (Belgrade 2015).

The Concept of Law

1 Roman and Byzantine Concept

Although the Byzantines based their entire legal and political tradition on Roman law, their concept of law (in the sense of *ius*) was essentially different from that which had been held by the Romans. In fact, the Byzantines had no general concept of law. The conception of *ius* as the body of legal rules forming the law (*droit*, *diritto*, *derecho*, *Recht*), inherited from the classical Roman tradition, had already been rejected in Justinian's time. To be sure, Justinianic professors translated the term *ius* into the Greek δίκαιον, but this translation has no practical significance. When a Byzantine lawyer says or writes νόμος καὶ δίκαιον, he means law (*lex*) and justice, not statute (*lex*) and law (*ius*). Furthermore, the term δίκαιον bears the meaning "a (subjective) right". For example, the expression δίκαιον κληρονομίαν ἔχειν means "to have a right of inheritance". The most important and central legal concept is that of νόμος, which means law in the sense of *lex*, behind which the imperial legislator (νομοθέτης) is always present.¹

It is obvious from the way in which they translate their predecessor's texts that the Byzantine lawyers were not acquainted with the general idea of law. For example, Ulpian thought that law (*ius*) was derived from justice since law (*ius*) is the art of good and equality (*ius est autem a iustitia appellatum: nam, ut eleganter Celsus definit, ius est ars boni et aequi*).² The editors of *Basilika* translated this as follows: ὁ νόμος ἀπὸ τῆς δικαιοσύνης ὡνόμασται; ἐστι γὰρ νόμος τέχνη τοῦ καλοῦ καὶ ἴσου.³ Thus *ius* is replaced by νόμος with the result that Ulpian's play on *ius-iustitia* is lost. The same occurs in the translation of another Ulpianic passage: "laws [*iura*] are not created for the individual but for everyone" (*iura non in singulas personas, sed generaliter constituuntur*).⁴ In this case a plural

¹ D. Simon, "Zakon i običaj u Vizantiji" ["Law and Custom in Byzantium"], *APFB* 2 (1987), p. 145.

Cf. S.N. Troianos, "Das Gesetz in der griechischen Patriistik", in *Das Gesetz in Spätantike und frühem Mittelalter*, 4. *Symposium der Kommission "Die Funktion des Gesetzes in Geschichte und Gegenwart"* (Göttingen 1992), pp. 47–62.

² D. I, 1,1, *Corpus Iuris Civilis, volumen primum*, ed. Th. Mommsen (Berlin 1895, reprint Clark, New Jersey 2010), p. 1.

³ Bas. II, 1,1, *Basilicorum Libri LX, series A, volumen i, textus librorum I–VIII*, ed. Scheltema, Van der Wall, and Holwerda, p. 15.

⁴ D. I, 3,8, ed. Mommsen, p. 6.

form *iura* (laws) is rendered νόμοι (statutes). The *Basilika* text runs: Οὐ περὶ τοῦ καθ' ἔκαστον, ἀλλὰ κοινῶς οἱ νόμοι τίθενται.⁵ In Byzantium, the principle of νόμος always took precedence over other legal rules. Down until the fall of the Byzantine Empire, Byzantine lawyers would make reference to “the law”, even when a specific statutory provision did not exist. There are also many provisions in legal documents indicating that everything should be done in accordance with statute (κατὰ νόμον). These formulations have led modern scholars to try to identify which statutes were being referred to. But in all these instances Byzantine lawyers and notaries had in mind what would be called “legality” or “the rule of law” and not any particular legal provision.⁶

2 Serbian Concept

As in Byzantium, the general concept of law in Serbia was not taken to be the Roman *ius*. Rather, the general legal concept in mediaeval Serbia was *zakon* (Законъ or Законъ), a term which in the modern Serbian language indicates the ultimate act of State power; it can be translated νόμος in Greek and *lex* in Latin, *Act* or *Statute* in English, *la loi* in French, *la legge* in Italian, *la ley* in Spanish, *das Gesetz* in German, and so on in other languages, whilst in other Slavonic languages it is virtually the same word. The term is of ancient derivation, being first mentioned in documents of the end of the 12th century.⁷ During the following centuries it can be found in numerous legal sources with one of two basic meanings: firstly as a legal rule in general (*regula iuris*) and secondly as the translation of the Greek νόμος, a law-making act of the Byzantine Emperor. In its first meaning it occurs in legal documents of Serbian origin, whereas in its second it can be found in Byzantine legal compilations translated and adapted for mediaeval Serbia.⁸

5 Bas. II, 1,19, ed. Scheltema, Van der Wal, and Holwerda, p. 17.

6 See S. Šarkić, “The Influence of Byzantine Ideology on Early Serbian Law”, *The Journal of Legal History* 13.2 (1992), pp. 147–154. Cf. Y. Vin, “Zakon poryadka trebuet: ponyatiye ‘Zakon’ po materialam ekspertnoy sistemy ‘Vizantiyskoe pravo i akti’” [“The Law Demands the Order: The Concept ‘Law’ by Materials of Expert System ‘Byzantine Law and Acts’”], *Mir Pravoslavja* 10 (2019), pp. 43–95.

7 Such as Nemanja’s charter to the monastery of Hilandar from 1198 and Saint Sabba’s typikon (a set of regulations prescribing the administrative organization and rules of behaviour of a cenobitic monastery) for Hilandar of 1199. See Čorović, *Spisi Svetog Save*, pp. 1 and 105 and Jovanović, *Sveti Sava, Sabrana dela*, p. 13.

8 The *Syntagma* of Matheas Blastares contains the chapter H, under the title *On the Law* (О Законе), with the Roman lawyer’s definitions of law, translated into Serbia from Byzantine

In the legal documents of Serbian origin, *zakon* indicated a generally obligatory rule (*regula iuris*) which was usually not a result of the activity of a monarch as ultimate holder of State power. Even where a law was made by a State authority, such a legal rule had primarily the appearance of a customary legal provision, regulating the condition within one particular manor (*vlastelinstvo*) rather than within the whole national territory. Otherwise such laws prescribed the legal position of different categories of inhabitants and identified particular rules of status. Sometimes a law would be introduced to regulate one particular problem. The concept of law in this period also includes a legal rule derived from custom or from a private contract. Each of these uses can be illustrated from many hundreds of cases from several sources.⁹

legal compilations and not from a Latin original (edition Novaković, p. 421). See S. Šarkić, “Νόμος et zakon dans les textes juridiques du XIVe siècle”, in *Byzantium and Serbia in the 14th Century* (Athens 1996), pp. 257–266.

⁹ See S. Šarkić, *Zakon u glagoljskim i cirilskim pravnim spomenicima (od XII do XVIII veka)* [Law in Glagolitic and Cyrillic Legal Sources (from the 12th to 18th Centuries)] (Novi Sad 1994, second expended edition Novi Sad 2015). The author has quoted all meanings of the term *zakon* that appear in Serbian legal documents. All provisions from Serbian legal sources which contain the title *zakon* (law, lex, νόμος), with a translation into a modern Serbian and comments, were edited by R. Mihaljić, *Zakoni u starim srpskim ispravama* [Laws in Old Serbian Documents] (Belgrade 2006).

PART 2

The Law of Persons

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Classification of Persons

Serbian legal sources show us that different types of status and legal rights enjoyed by persons were present at the end of the 12th century. In the charter of Stefan Nemanja issued to the Hilandar monastery we read the following: "And if anyone of the monastery's serfs or Vlachs flee from the Great Župan or someone else, send them back: if Župan's serfs come onto the monastery's manor, send them back again" (И ако къто ѡдь манастирскихъ лѹди бѹжи, или Влахъ, подь велиега жѹпана, или код иного кога, да се вракаю ипеть, ако ли ѡдь жѹпанихъ лѹди, приходе ѧ манастирске лѹди, да се вракаю опеть).¹ This means that peasants in Serbia had already lost their freedom of movement and that they belonged either to the Church or to the Great Župan (ruler) or to someone else (noblemen). In the Žiča chrysobull (χρυσόβουλον),² King Stefan Nemanjić clearly marks the difference between noblemen (*vlastela*) and the "poor people" (ѹбоги люди, *ubogi ljudi*). The King provided different punishments for the same trespasses depending on origin (противѹ родѹ) and dignity (противѹ санѹ). Even among noblemen the charter differentiated between the lords (властелы) and the other soldiers (воиникъ, probably lesser lords). The "poor people" were divided into priests (*popovi*, попове), Vlachs (Власи, singular = Влахъ, dependent shepherds) and serfs (in Serbian simply люди, людие, лѹди, *ljudi* = people, *homines*).³

The abovementioned fragments leave no doubt that in 13th-century Serbia there existed several social classes with unequal legal status. In the 14th century, especially after the promulgation of Dušan's Law Code, social inequality increased, and we can speak about four categories of persons: 1) noblemen (*vlastela*); 2) commoners (*sebri*); 3) townsmen (*gradani*), and 4) foreigners (*stranci*).

¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 69.

² Generic name for several types of documents bearing the Emperor's gold bulla; later, used to indicate solemn documents, even those without such a bulla.

³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

Noblemen (*Vlastela*, Властели)

1 Name

Vlastela (noblemen) was the term that designated the privileged class in mediæval Serbia. Etymologically it comes from the word *vlast* (власт = power), so *vlastela* (singular = *vlastelin*, властелинъ, *vir nobilis*) are those who have a power over another category of persons.¹ The first appearance of the word *vlastela* was in the *Nomokanon of Saint Sabba*, wherein the Greek expression ἄρχων was translated as *vlastel*, *boljar* and *knez*.² In the Žiča chrysobull (1220) the higher class is named *vlastela* (ѧψε βѹдє ѿть властель), whilst all other inhabitants are considered as lesser ones (ѧψε ли ѿть нижнихъ).³

The term became common in the first half of the 13th century. For example, Saint Sabba in his charter to the monastery of Saint Nicholas on the island of Vranjina (1233)⁴ speaks of *other noblemen* (ѿть прѹчињъ властель).⁵ King Vladislav, in a charter presented to the same monastery (between 1 September 1241–31 August 1242), mentions *a nobleman of mine* (мои властелинъ).⁶

In some Serbian sources the name *boljar* (болјаръ, боларь) is used for noblemen. This word came from Bulgaria and, especially in Russia, designated the privileged higher class. It means someone who is better (Serbian *bolji*, Latin *miliores, optimatus unus*),⁷ but it can be found in literary texts more than in

¹ See V. Mažuranić, *Prinosi za hrvatski pravno-povjestni rječnik* [Contributions for the Croatian Dictionary of Legal History] (Zagreb 1908–1922, reprint Zagreb 1975), pp. 1567–1588; Jireček and Radonjić, *Istorija Srba*, vol. II, p. 59; See also E.P. Naumov, *Gospodstvuyuščiji klase i gosudarstvenaja vlast v Serbiï XIII–XIV vv.* [The Ruling Class and State Power in 13–14th Century Serbia] (Moscow 1975) and R. Mihaljić, “Vlastela”, in *LSSV*, pp. 87–89.

² N. Radojčić, “Vlastel u Zakonu gradskom Nomokanona sv. Save” [“Nobleman in Nomokanon of St. Sabba”], *Glas SANU* 113, *odeljenje društvenih nauka* 96 (1949), pp. 1–14. In the 13th century the ἄρχοντες were high-ranking officials in Byzantium, synonymous with μέγιστανες and δυνατοί.

³ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 94–95.

⁴ Vranjina (Serbian Cyrillic Врањина, Albanian *Vraninë*) is an island in Skadar Lake (Serbian *Скадарско језеро*, Albanian *Liqen i Shkodrës*) in the Montenegrin municipality of Podgorica.

⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 128.

⁶ Ibid., p. 163.

⁷ Mažuranić, *Prinosi*, p. 78. On boljars see S. Novaković, “Baština’ i ‘boljar’ u jugoslovenskoj terminologiji srednjeg veka” [“Baština’ and ‘Boljar’ in Yugoslav Terminology of the Middle Ages”], *Glasnik sKA* 92 (1913), pp. 248–255, and the article R. Mihaljić, “Boljar”, in *LSSV*, p. 56.

legal documents. For example, in the treaty between King Radoslav and the city of Dubrovnik (4 February 1234) *my royal boljars* (κτῷ λιοβῷ ωδ, ΒΟΛΔΡΩΣ ΚΡΑΛΕΙΕΣΤΒΑ ΜΗ) were mentioned.⁸ The term can be found in the charter of King Dušan to the Hilandar monastery (February 1340)⁹ and in the list of the estate of the Holy Virgin monastery in Tetovo (1343).¹⁰ But in the Saint Stephen monastery charter and in the Dečani charter *boljars* are spoken about as a group of the monastery's serfs.¹¹ Generally, however, the term *boljari*, compared to the term *vlastela*, is rarely used in our sources.

In contrast to Serbian sources, Byzantine writers used different terms for Serbian noblemen. Constantine Jireček has highlighted that Emperor and historian John VI Cantacouzenos calls the most powerful noblemen in the Privy Council (Βουλή) of King Dušan τοὺς ἐν τέλει καὶ μεγάλα δύναμένους or τῶν ἐν τέλει τοὺς δυνατωτάτους. Jireček also noted that in Greek sources Serbian noblemen were also called "powerful" (δυνατοί), "magnificent" (μεγαλώνυμοι), illustrious and highborn.¹² Nikola Radojčić brought further attention to the riches of Cantacouzenos' terms used for Serbian noblemen, pointing at the following expressions: εὐπατρίδαι, ἀριστοί, τῶν πραγμάτων ἀρχοντες, δυνατοί, ἐπιφανεῖς, ἐν εὐγενείᾳ λαμπρυνομένοι, στινκλητικοί. However, the term that was generally used was οἱ ἐν τέλει.¹³ Such an abundance of names used for Serbian noblemen came from the great, expressive potential of the Greek language and from the desire of Byzantine writers to show their classical education.

2 Social Status

The high social position of noblemen (*vlastela*) can clearly be seen from legal documents wherein the sovereign always mentions the noblemen beside his relatives. For example in the King Vladislav chrysobull to the church of Holy

⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 130. My *boljars* are also mentioned in the treaty of Bosnian Prince (*ban*) Matej Ninoslav with Dubrovnik of 22 March 1240 (*ibid.*, p. 154).

⁹ Edited by S. Marjanović-Dušanić and R. Subotin-Golubović, *ssa* 6 (2007), p. 57.

¹⁰ *Spomenici za srednovekovnata i ponovata istorija na Makedonija* [Sources for Mediaeval and Modern History of Macedonia], vol. III, ed. L. Slaveva, P. Miljkovik-Pepek, and Redactor in Chief V. Mošin (Skopje 1980), p. 290. Tetovo (Serbian Cyrillic *Тетово*, Albanian *Tetovë*, Turkish *Kalkandelen*) is a city in the northwestern part of North Macedonia.

¹¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465; Ivić and Grković, *Dečanske hrisovulje*, p. 68.

¹² Jireček and Radonjić, *Istorija Srba*, vol. II, pp. 21, 60.

¹³ N. Radojčić, *Srpski državni sabori u srednjem veku* [Serbian State Councils in the Middle Ages] (Belgrade 1940), pp. 293–294.

Virgin Bistrička (1234–1243)¹⁴ it is said: “That nobody has any power over everything that I gave to this church, neither my brother, nor my cousins, nor my other relatives, nor my noblemen” (тако да никто же не имать власти никојеже наđь сими даљними цркви сијен ни моја братија, ни братоучедије, ни ини мој рође, ни мој властеле).¹⁵ In a charter of King Milutin to the Hilandar monastery (about 1300) we read: “And if any nobleman, or some of my relatives, enter [the monastery manor] and take something, let him pay to me, the King, twelve oxen” (И властелинъ кто любо и шт соуродыникъ моихъ ако оулѣзѣ тамо и забавитъ ѿт, да плати краљевство ми .ВІ. волни).¹⁶ At the end of 1331, King Dušan, in the treaty with Dubrovnik, ordered that no one can buy anything from the Ragusans without their consent. Among other things he also says “that nobody takes anything from them [Ragusans] without purchase, neither me the King, nor my royal cousin, nor any nobleman on my royal land” (да имъ не ѳзме ница краљевство ми безъ кољпа, ни кнезъ краљевства ми, ни ки властелинъ Ѹ земли краљевства ми).¹⁷

The noblemen are mentioned in the sources among the court dignitaries as well. When giving lands and privileges to the monastery of Saint Nicholas on the island of Vranjina, King Vladislav says that no one will posses these lands: “neither my nobleman, nor my courtier” (да не има тоу ѿблости ни мој властелинъ, ни мој владаљацъ).¹⁸ King Dušan used the same formula in his treaty with Dubrovnik from 1331 (ни кнезъ краљевства ми, ни ки властелинъ).¹⁹ Queen Helen said the same thing when giving some presents to the Saint Nicholas monastery on Vranjina (between 1277 and 1309), and she named her dignitaries *vladušti* (А отъ властель великихъ или малихъ и владѹчијихъ прѹчијихъ).²⁰ Confirming privileges to Ragusan merchants, on 10 January 1356, Emperor Uroš ordered that nobody was to obstruct the Ragusan trade activity “neither me, the Tsar, nor anyone of my noblemen, nor of any headman ... nor of any of the courtiers in my imperial state” (ни ѿд царства ми, ни ѿд којега властелина царства ми, ни ѿтъ ниједнога кнѧжлије ... ни ѿтъ и нога кога владѹчијаго Ѹ земли царства ми).²¹

¹⁴ The monastery was built in the valley of the River Lim (Serbian Cyrillic *Лим*), flowing through Montenegro, Serbia, and Bosnia and Herzegovina. Lim is the right and largest tributary of the Drina (Serbian Cyrillic *Дрина*).

¹⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

¹⁶ Ibid., p. 333.

¹⁷ Edited by D. Jećmenica, ssa 10 (2011), p. 22.

¹⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 163.

¹⁹ Edited by D. Jećmenica, ssa 10, (2011), p. 22.

²⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 261.

²¹ Edited by M.A. Černova, ssa 8 (2009), p. 82.

3 Division

The nobles in mediaeval Serbia were not a homogeneous class. Their ethnic origin and social, political and economic positions were different, and therefore they could be divided into several groups.

Those persons that Serbian rulers called “my royal (or imperial) noblemen” (*vlastela kraljevstva or carstva mi*) were not always Serbs. Among the noblemen there were different nations, such as Greeks (Byzantines), Germans, Albanians, Latins,²² etc. In the charter of Queen Helen giving presents to the Saint Nicholas monastery on the island of Vranjina, the Queen said: “And from my lords, great or small ... whether Serb, or Latin, or Albanian, or Vlach” (А отъ властель великихъ или малихъ ... или є Србинъ, или Латининъ, или Альбанасъ, или Влахъ).²³ Article 173 of Dušan’s Law Code²⁴ starts: “Lords, greater and lesser, who came to my Imperial Court, whether Greek, German or Serb ...” (Властѣлѣ и властѣличисы кон гредоу ѿ дворъ царства ми, или грѣкъ, или нѣмьцъ, или срѣбинъ ...).²⁵ The Council in Krupište²⁶ (2 May 1355) was in session in presence of all the “lords, Serb, Greek and Maritime” (и съ всѣми властели срѣбескими и грѣческими и поморскими).²⁷ Tsar Dušan’s charter to the Saint Nicholas monastery in Dobrušta²⁸ (c.1355) mentions Serbian and Greek noblemen (и съ всѣми властелї срѣбескимї и грѣческимї).²⁹ In the charter of Tsar Dušan given to the Ragusan nobleman Maroje Gočetić (5 December

²² The term *Latin* was used by Orthodox people to refer to Roman-Catholics, in mediaeval Serbia especially for the Ragusans and inhabitants of the Adriatic coast towns (Kotor, Budva, Ulcinj, Bar, etc.).

²³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 261.

²⁴ The numeration and the text of all articles quoted in this work are according to the edition of Stojan Novaković (see Chapter 2, note 54). The English text of all the articles quoted in this work is according to the translation of Malcolm Burr (see Chapter 2, note 81), with some exceptions that are indicated in the text.

²⁵ Burr, “The Code of Stephan Dušan”, p. 533; Novaković, *Zakonik Stefana Dušana*, p. 135.

²⁶ Krupište (Serbian Cyrillic *Крупиште*), small village in North Macedonia, in the valley of the River Bregalnica (Serbian Cyrillic *Брегалница*).

²⁷ Novaković, *Zakonski spomenici*, p. 429. New edition by M. Koprivica, “Povelja cara Stefana Dušana Hilandaru za zabele Ponorac i Kruščicu i trg Kninac” [“The Charter of Emperor Stefan Dušan to the Monastery of Hilandar from ‘Zabel’ Kruščica, Ponorac and Town-Market Kninac”], *ssa* 15 (2016), p. 111. “Maritime” (*Pomorje*) was the name for the region on the Adriatic coast, south from Dubrovnik (now in Montenegro and partly Albania).

²⁸ Dobrušta (Serbian Cyrillic *Добрушта*, Albanian *Dobruzhë*) was a mediaeval village in Kosovo (municipality of Prizren) that no longer exists.

²⁹ Novaković, *Zakonski spomenici*, p. 719. New edition of the chrysobull by S. Mišić, “Hilandarski falsifikat hrisovulje Stefana Dušana za manastir Svetog Nikole u Dobrušti” [“Hilandar False Chrysobull of Stefan Dušan to the Monastery of St. Nicholas in Dobrušta”],

1355) we read as well: "that no one from my Imperial lords, whether Greek or Latin ..." (ΔΑ ΝΙ ΗΝΙ ΝΙΤΚΟ ΉΔΥ ΒΛΑΣΤΕΛ ΖΔΡΥΣΤΒΑ ΜΙ, ΝΙ ΓΡΥΚΣ, ΝΙ ΛΑΤΙ-ΝΙΝЬ).³⁰

In the Serbian mediaeval State, the differences between noblemen on the basis of their social, political or economic position were much more important than those based upon their ethnic origin. Some lords were ecclesiastical, but most were worldly noblemen. The sources speak of the great, small and lesser lords. Some lords had their manors as hereditary estates and some as fiefs. Using these criteria we can divide the noblemen class in three basic ways: a) *ecclesiastical and worldly lords*; b) *great, small and lesser lords*; and c) *hereditary estate holders and fief holders*.

3.1 Ecclesiastical and Worldly Lords (crkvena i svetovna vlastela)

Nikola Krstić, the first professor of legal history in Serbia, was the earliest modern historian to make use of this division between ecclesiastical and worldly noblemen. In his considerations on Dušan's Law Code, Krstić wrote that though the sources did not speak of such a division, it could be seen through reasoning. Krstić used special privileges as a criterion of belonging to the nobleman class. For this reason, he extended the name noblemen (*vlastela*) to members of the high clergy, although the sources only meant worldly lords by the term *vlastela*.³¹ According to the opinion of Teodor Taranovski the expression *vlastela* means only the worldly higher class: the Church and the clergy are something different, because the monasteries got the land from the monarch as the institutions, not as private persons (individuals).³²

Although in the majority of legal sources the name *vlastela* means the worldly lords, we consider that the abovementioned division could be accepted. First of all, the whole clergy was not within the privileged class. Lesser priests, as we shall see, belonged to the class of commoners (*sebri*), while the higher clergy enjoyed all the benefits of noblemen. Besides that, some sources (examples are rare, but still exist) under the term *vlastela* mean both

³⁰ SSA 15 (2016), p. 132. According to the opinion of the editor, the chrysobull was found to be a false, originating around 1363–1365.

³¹ Edited by D. Ječmenica, SSA 12 (2013), p. 70.

³² N. Krstić, "Razmatranija o Dušanovom zakoniku" ["Considerations on Dušan's Law Code"], *Glasnik DSS* 6 (1854), pp. 112–121. Among modern authors, this division was adopted by D. Janković, *Istorija države i prava feudalne Srbije, XII–XV vek* [History of the State and Law of Feudal Serbia, 12th–15th Centuries] (Belgrade 1957), p. 42 sq.

³² T. Taranovski, *Istorija srpskog prava u nemanjičkoj državi I–IV* (Belgrade 1931–1935), vol. I, p. 12.

worldly lords and ecclesiastical dignitaries. The most remarkable example is King Milutin's charter to the Roman-Catholic church of Holy Virgin Ratačka (15 March 1306).³³ At the end of the charter it states:

And this favour created His Royal Majesty to the church of Holy Virgin Ratačka, when he came in the city of Kotor. And there were with His Majesty the King, the noblemen: Archbishop of Bar Marin, and purser Miroslav, and bishop of Hum John, and bishop of Zeta Michael, and headman Branko, and majordomo Miroslav, župan Vladislav, bishop of Kotor Dumunija, and two witnesses, Drago and Paul.

И тоу милость створи кралевство ми дому Светыне Богородице Ретъу'скыи
къди приде оу Которь градъ. и тоу быше съ кралевствомъ ми властелю: арь-
хиепискоупъ барски Маринъ, и каџњецъ Мирославъ, и јепискоупъ хлъмъскіе
Иванъ, и јепискоупъ зетъскы Михаилъ, и чел'никъ Бранко, дѣдъ Миро-
славъ, жоупанъ Владиславъ, јепискоупъ котор'скы Думчніа и два свѣдоха
Драго и Пављъ).³⁴

Both worldly and ecclesiastical dignitaries, Roman Catholic and Greek Orthodox (purser, headman, majordomo, župan—archbishop, bishops) are clearly cited under the common name of *vlastela*. A similar example can be found in the list of the estate of the Holy Virgin monastery in Tetovo (about 1343), where Bishop Kalnik is mentioned among the other noblemen.³⁵ However, in Tsar Dušan's *prostagma*³⁶ to his Greek courtier George Phokopoulos, written in Greek, ecclesiastical and worldly lords are explicitly mentioned side by side (*καὶ τῶν λοιπῶν ἀρχόντων τῆς βασιλείας μου καὶ τῶν ἐντιμοτάτων ἐκκλησιαστικῶν ἀρχόντων*).³⁷

Normally, churches and monasteries got land as institutions, but in the sources we can see exceptions to this rule as sometimes members of the clergy

33 The ruins of the monastery are situated today on the Ratac (Serbian Cyrillic *Pamač*) peninsula, between the Montenegrin Littoral cities of Bar and Sutomore.

34 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 398–399. Taranovski, *Istorija*, vol. I, p. 12, took this text into consideration, but he wrote that this was only an exception that could not abolish the general rule, even if some other examples could be found.

35 Slaveva, Miljkovik-Pepek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, pp. 289–290.

36 *Prostagma* or *prostaxis* (πρόσταγμα, πρόσταξις) or *horismos* (ὁρισμός, lit. "definition") or *pit-takion* (πιττάκιον), synonymous terms designating an administrative order.

37 Solovjev and Mošin, *Diplomata graeca*, p. 74.

were given land as private persons. For example, on 19 May 1343 King Dušan gave to the Elder (*starac*) Grigorije, econom of the monastery of Saint Peter Koriški, a church in Koriša (village at Kosovo) as a life estate.³⁸ Also, in a charter of Despot John Uglješa from February 1369, when solving the judicial trial between the Zographou (Ζωγράφου) monastery and the bishop of Hierissos ('Ιερισσός, town in Macedonian Chalkidike), it was indicated that the bishop possessed the land as a private person.³⁹ The most remarkable example is the charter of Emperor Uroš, wherein he gave Saint Nicholas Stoški church with several serfs to Cyril, the Metropolitan (μητροπολίτης) of Melnik,⁴⁰ granted to his hereditary estate (May 1356). The text says that Cyril could dispose with the church during his lifetime, and after his death he could give it to the Church for the soul or grant it to anyone else (да си јесть волиъ ми тъ куръ иномъзи цръквомъ до своеага живота а по смртти своенъ люби за душъ под црквъ подписати а или кумъ харизати).⁴¹

The noblemen class in Serbia, as in other feudal countries, had administrative, financial and judicial immunity on their manors. The information that the sources provide us with concern mostly ecclesiastical manors, but we can suppose that the same legal position applied for worldly lords' manors. In the Saint George's monastery charter, for example, it is said that the Church was exempt from all taxes that normally should have been given to the King. No layman could judge the serfs belonging to the monastery, and none of the King's servants could enter a manor or collect taxes.⁴²

Still, differences between the worldly and ecclesiastical lords existed. According to article 42 of Dušan's Code worldly lords "shall pay the corn-due and provide soldiers to fight" (ραзвѣ да даю сокиѣ, и воинскоу да воюю по законоу).⁴³ The corn-due (*soće*)⁴⁴ was collected from noblemen and commoners

³⁸ With this document, the old church and its properties were donated to Grigorije, and after his death the land was to become property of Hilandar. A new edition of the chrysobull has been done by S. Mišić, *SSA* 12 (2013), pp. 21–29.

³⁹ Solovjev and Mošin, *Diplomata graeca*, pp. 268–279.

⁴⁰ Melnik (Bulgarian *Мелник*, Greek Μελένικο) is a town in Blagoevgrad Province in the southwestern Pirin Mountains in Bulgaria.

⁴¹ Edited by R. Mihaljčić, *SSA* 2 (2003), p. 88. Cf. R. Grujić, "Lična vlastelinstva srpskih crkvenih predstavnika u XIV i XV veku" ("Private Property Manors of Serbian Ecclesiastical Dignitaries in the 14th and 15th Centuries"), *Glasnik SND* 13 (1934), pp. 47–68.

⁴² Mošin, Ćirković, and Sindik, *Zbornik*, p. 317 sq.

⁴³ Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 38; *Zakonik cara Stevana Dušana*, vol. III, p. 110 (edition of Serbian Academy for Sciences and Art).

⁴⁴ About the meaning of the word *soće* see Chapter 5.

(*sebri*), but the lord had to add one *perper*⁴⁵ or *kabao*⁴⁶ of corn and give it to the Emperor. These were two basic obligations that worldly lords had towards the King (Emperor). Besides that, when the Tsar travelled, nobles had to organize the transport: "Everyone shall provide for the Tsar wherever he goes. From every town to the district, from district to district. And again from district to town" (Цара въсакъ да диге коуда камо греде; градъ въсакы до жоупѣ, и жоупа до жоупѣ; и пакы жоупа до града).⁴⁷ Article 127 of Dušan's Code says: "Where a town or castle is overthrown, let the townsmen of that town rebuilt it and the district in which the town is situated" (Гдѣ се градъ ѿбори или коула, да га направе граждане тогазији града и жоупа цио юсть прѣдѣль тога града).⁴⁸ The lord's task was to supervise the rebuilding. The extraordinary aids (*auxilia, aide féodale*) that the Tsar's subjects (including worldly lords) owed him were defined by article 128 of the Code: "When the Lord Tsar hath a son to marry or a christening and hath need to build a court and houses, let every man help, both small [commoners] and great [nobles]" (Господинъ царь къди име сына женити или кръщенїе и боудѣ мѣ на потрѣбѣ дворъ чинити и коуксѣ да въсакъ поможе малъ и великъ).⁴⁹

45 The traditional gold currency of the Byzantine Empire had been *nomisma* (νόμισμα) or *solidus*, later called *hyperpiros* (Greek ὑπέρπυρος, meaning gold tried in the fire), whose gold content had remained steady for seven centuries (3.5 grams of gold) and was consequently highly prized. From the 1030s, however, the coin was increasingly debased, until in the 1080s, following the military disasters and civil wars of the previous decade, its gold content was reduced to almost zero. Consequently in 1092 Emperor Aleksios I Komnenos undertook a drastic overhaul of the Byzantine coinage system and introduced a new gold coin, the *hyperpiros*. This was the same standard weight as the *solidus*, but of less gold content. Later on the quality of the coins declined, and in the 14th century their weight was far from uniform. At the end of the 13th century, when Venice and Florence started to mint their ducats and florins, their golden coins were equal to Byzantine *hyperpiros*, but in the 14th century, *hyperpiros* lost its value and was usually regarded as the equivalent of a half ducat. The name *hyperpiros* was adopted in various forms by Western Europeans (Latin *perperum*, Italian *perpero*) and Slavic countries of the Balkans (*perper, nepnep*). The *perper* was the Serbian money of account (Serbia did not have its own golden money, beside the Byzantine), and its value was 12 dinars. For example, a price for a horse in Dušan's epoch was c.10 perpers and for a female slave in Dubrovnik 10–12 perpers. On Serbian money, see the detailed study by V. Ivanišević, *Novčarstvo u srednjovekovnoj Srbiji* [Money Trading in Mediaeval Serbia] (Belgrade 2001). See also R. Ćuk, "Novac", in LSSV, pp. 441–444.

46 One *kabao* = 16 kg.

47 Article 60. Burr, "The Code of Stephan Dušan", p. 210; Novaković, *Zakonik*, p. 50; *Zakonik cara Stefana Dušana*, vol. III, p. 114 (edition of Serbian Academy for Science and Art).

48 Burr, "The Code of Stephan Dušan", p. 522; Novaković, *Zakonik*, p. 97.

49 Burr, "The Code of Stephan Dušan", p. 522; Novaković, *Zakonik*, p. 98; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

Ecclesiastical manors were much more privileged than those of worldly lords. This is clearly declared by article 26 of the Code: "Churches situated on the lands of my Empire, My Majesty released from all sevices⁵⁰ both great and small" (Цркви въсё цю се обрѣтаю по земли царства ми исвободи царство ми въсѣх работъ малыхъ и великихъ).⁵¹ It means that the churches and monasteries did not have an obligation to pay the *soće* to the Emperor⁵² or provide soldiers to fight.⁵³

The judicial competence of ecclesiastical lords was also greater than the jurisdiction of worldly lords. They had the power of jurisdiction over their own serfs and slaves, as well as nobles, and they could judge all clerics and even laymen in matrimonial and hereditary matters.

Ecclesiastical manors could never be confiscated, unlike manors of a worldly lord, even in a case of high treason.

3.2 Great, Small and Lesser Lords (*velika vlastela, mala vlastela i vlasteličići*)

In mediaeval Serbia all noblemen held their manors as *tenants in capite*. This means that all lords were directly dependent on the monarch (Great Župan, King, Tsar), notwithstanding the big difference in their social, political or economic position. Though some lesser lords lived on Church manors, whose task was to protect a monastery and its monks from robbers, they were not vassals of the Church, but directly of the ruler. For example, Tsar Dušan granted the monastery of Saint Archangels with his lesser lord (*vlasteličić*) Novak Petziya, with his houses, vineyards, fields and mills (И приложи царство ми владеличик'я царства ми Новака Пецию съ дворми и съ виноградами, и с нивами,

⁵⁰ *Rabota*, the general Slavonic word for compulsory, usually unpaid, day labour for the State or for one's lord (*corvée*), Greek ἀγγαρέα.

⁵¹ Burr, "The Code of Stephan Dušan", p. 203; Novaković, *Zakonik*, p. 27; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

⁵² Already the Dečani charter prescribes that the *soće* has to be given to the Church (и соке да дајо цркви). Novaković, *Zakonski spomenici*, p. 655; Ivić and Grković, *Dečanske hrisovulje*, p. 271.

⁵³ Before the promulgation of Dušan's Law Code, some charters exempted the monasteries from war service. For example King Dragutin in his charter to the monastery of Hilandar (1276–1281) says that the monastery serfs have no duty to fight (не ходити на воискоу ни с кымы; Mošin, Ćirković, and Sindik, *Zbornik*, p. 269). King Milutin gave the same privilege to the monastery of Saint Stephen in Banjska (Воиске, ни града, ни соке; Mošin, Ćirković, and Sindik, *Zbornik*, p. 465) and Tsar Dušan to the monastery of Saint Archangels Michael and Gabriel (И да нѣ воиске ни једномоу чловѣку црквомоу; Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 112).

и съ мали).⁵⁴ Issuing a charter to the lesser lord Ivanko Probišitović (1350), Emperor Dušan named Ivanko as “Despot’s lesser lord” (властеличиню деспот-тобј), although Ivanko got the rights of hereditary estate holder directly from Tsar, not from the Despot (probably John Oliver, one of the most powerful lords on Dušan’s court).⁵⁵

Regarding political and economic power, Serbian legal sources differentiate between great lords (*velika vlastela*), small lords (*mala vlastela*) and lesser lords (*vlasteličici*).

Great and small lords were mentioned for the first time in the King Uroš charter presented to the monastery of Saint Peter and Paul on the River Lim (1254–1262). The chrysobull, which confirmed the donations of the King’s grandfather Prince Miroslav,⁵⁶ was written in the presence of ecclesiastical dignitaries and my “royal noblemen, great and small” (и съ властели великими и малими кралевства ми).⁵⁷ Great and small lords, side by side, are mentioned three times in the Law Code of Stefan Dušan. The preface says that “this Code is established by our Orthodox Council, by the Most Holy Patriarch Kir Joanikije and by all archpriests and clergy, both small and great, and me, the true-believing Tsar Stephan, and all the lords of my Empire, both small and great” (Си же законъи поставляемъ ѿт православнаго събора нашего, прѣбывши-ныи патріархъм курь Iваниксъемъ, и въсѣмы архѣере и црковники малимы и великими и мною благовѣрными царемъ Стефанум и въсѣмии властели цар-ства ми, малими же и великими). Article 121 begins as follows: “And no lord, either small or great” (Да нѣсть вол’и властѣлини ни маль ни велись). At the beginning of article 136, we read: “My imperial writ may not be disobeyed, to whomsoever it be sent, be it to the Lady Tsaritsa, or to the King⁵⁸ or to the lords, great or small” (Книга царства ми да се не прѣслѣша гдѣ приходи или къ госпо-жди царици, или къ кралю или къ властѣломъ великимъ и малимъ).⁵⁹

54 Mišić and Subotin-Golubović, *Svetoorhanedelovska hrisovulja*, p. 90.

55 Edited by V. Aleksić, *SSA* 8 (2009), p. 73. On John (Jovan) Oliver see B. Ferjančić, *Despoti u Vizantiji i južnoslovenskim zemljama* [Despots in Byzantium and South-Slavic Countries] (Belgrade 1960), pp. 159–166.

56 Prince Miroslav (Serbian Cyrillic *Мирољав*), lord of Hum (modern Herzegovina), was the brother of the King’s grandfather, Stefan Nemanja.

57 Mošin, Ćirković, and Sindik, *Zbornik*, p. 227.

58 The King in the Code always means Dušan’s son, heir to the throne Uroš. See S. Ćirković, “Kralj u Dušanovom zakoniku” [“The King in Dušan’s Law Code”], *ZRVI* 33 (1994), pp. 149–164.

59 Burr, “The Code of Stephan Dušan”, pp. 198, 520, 524; Novaković, *Zakonik*, pp. 6, 93, 103; *Zakonik cara Stefana Dušana*, vol. III, pp. 98, 132, 136 (edition of Serbian Academy for Science and Art).

We must note that the sources do not mark any difference in legal rights between the small and great lords. One can suppose that the great lords were more powerful, but the only legal privilege they had concerned summoning. It is said in article 62: "A greater lord shall not be summoned without the writ of the court, but others with the seal" (ВЛАДЕЛИНЬ ВЕЛІИ ДА СЕ НЕ ПОЗЫВА, БЕЗ' КНИГЕ СОУДИНЕ А ПРОЧИМЬ ПЕЧАТЬ).⁶⁰ This means that it had to be explained to greater lords why they were being summoned, while others had to come when an official merely showed them the imperial seal. Connected with summoning was also the privilege of great lords to be judged by their peers, as is clearly stated in article 152 of the Code: "so let great lords be jurors for a great lord, for middle persons their peers, and for commoners their peers" (ДА СЯ ВЕЛИМЬ ВЛАСТВЛОМЬ, ВЕЛИ ВЛАСТВЛЮМ, А СРБДНИМ ЛЮДЕМЬ ПРОТИВЪ ДРОУЖИНА ИХЪ А СЕБРДІАМЬ ИХЪ ДРОУЖИНА ДА СЯ ПОРГОПНИЦИ).⁶¹ Judgment by peers is a very well-known institution that can be found across mediaeval legal systems.⁶²

It remains unclear who among the court dignitaries belonged to the great and who to the small lords. The sources mention only a "great lord with a standard" (ВЕЛИКА ВЛАСТВЛINA СТЕГОНОШЕ)⁶³ who was not a simple standard-bearer but an officer of high military rank.⁶⁴ We can suppose that the high courtiers,

⁶⁰ Burr, "The Code of Stephan Dušan", p. 210; Novaković, *Zakonik*, p. 51; *Zakonik cara Stefana Dušana*, vol. III, p. 116. Even in this case the Code does not oppose a great to a small lord, but to "others" (*proči*), including the small lords.

⁶¹ Burr, "The Code of Stephan Dušan", p. 527; Novaković, *Zakonik*, p. 119; *Zakonik cara Stefana Dušana*, vol. III, p. 142. According to the opinion of Novaković (*Zakonik*, p. 238), "middle persons" (*srednjim ljudem*), opposed to the great lords, are small lords, merchants and citizens.

⁶² Cf. Magna Carta of 1215, article 39 (edited by J.C. Holt. London 1976, pp. 326 and 327): *Nullus liber homo capiatur, vel imprisonetur, aut disseisiatur, aut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum vel per legem terre* ("No free man shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land").

⁶³ Article 155 of the Code. Burr, "The Code of Stephan Dušan", p. 529; Novaković, *Zakonik*, p. 122; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

⁶⁴ S. Novaković, *Stara srpska vojska* [Old Serbian Army] (Belgrade 1893), pp. 39, 57, 65, writes that "a great lord with a standard" was not a simple standard-bearer but an officer of high military rank who got a standard as a sign of his command over several military forces. Krstić, "Razmatranija o Dušanovom zakoniku", pp. 115–116, compared "a great lord with a standard" with *barones banderiati* in Hungary, which means the most powerful lords who fought under their own flag. Taranovski (*Istorija*, vol. I, p. 14) pointed at the Lithuanian Statute of 1529, which mentions *pani horugovnije*, great lords with a standard (*horugva*) who led their own forces, among whom were the lesser lords. However, the deficiency of sources does not allow a conclusion that the lords in Serbia led their own regiments.

who carried Byzantine titles, belonged to the great lords as well, but a lack of sources makes this only a hypothesis.

The lesser lords were the class that stood, from a social and political perspective, under the great and small lords. The Serbian word *vlasteličić* (властеличък) is a patronymic, a name derived from the name of a father or ancestor. Constantine Jireček translated the word *vlasteličić* as “a son of a small lord” (“Sohn des kleinen Vlastelin”) and pointed out that in Dubrovnik the word has been translated as *zentilotto*.⁶⁵ In Greek charters issued by Serbian rulers, *vlastela* (noblemen) are called ἀρχοντες and *vlasteličići* (lesser lords) ἀρχοντόπουλοι.⁶⁶

The term *vlasteličić* was mentioned for the first time between 1277 and 1281, in King Dragutin's treaty with Dubrovnik, but it concerned the Ragusan merchants, not the Serbian lesser lords (Сиковъ милость створи кралевъство ми властелинкъмъ Дубровъвъкъмъ).⁶⁷ In the Law Code of Stefan Dušan, lords (*vlastela*) and lesser lords (*vlasteličići*) are listed one following the other, meaning that they both belonged to the same privileged class (articles 39, 142, 173).⁶⁸ They had the same responsibility for trespasses (articles 55, 142, 173) and enjoyed the same protection if commoners plundered their homes (article 144).⁶⁹ However, a difference in their legal status can be seen from article 50: “If a lord insult and shame a lesser lord let him pay one hundred perpers. And if a lesser lord insult a greater, let him pay one hundred perpers and be beaten with sticks” (Властѣлинъ кои вп'сѹе и исѹамоти властѣличка да плати ђ. перьперь и властѣличкъ ако вп'сѹе властѣлина, да плати ђ. перперь и да се бїе стапи).⁷⁰

Lesser lords (*vlasteličići*) were a relatively numerous class of military nobles, and they might have come from “soldiers”, mentioned in the sources from the beginning of the 13th century. Stefan, the first Serbian King, in his *Life of Saint*

⁶⁵ K. Jireček, *Staat und Gesellschaft im mittelalterlichen Serbien, I–III*, Denkschriften der Kaiserlichen Akademie der Wissenschaften in Wien, Phil. hist. Klasse LVI (1912), I, p. 44, and “Das Gesetzbuch des serbischen Caren Stephan Dušan”, ASPH 22 (1900), p. 214. Cf. R. Mihaljić, “Vlasteličići” in *LSSV*, pp. 91–82.

⁶⁶ Solovjev and Mošin, *Diplomata graeca*, pp. 32, 68, 74, 180 (ἀρχοντες); 68, 180 (ἀρχοντόπουλοι).

⁶⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 274. Until 1937, the charter was attributed to King Stefan the First Crowned (“Prvovenčani”).

⁶⁸ Burr, “The Code of Stephan Dušan”, pp. 206, 525, 533; Novaković, *Zakonik*, pp. 39, 109, 135; *Zakonik cara Sefana Dušana*, vol. III, pp. 108, 138–140, 150.

⁶⁹ Burr, “The Code of Stephan Dušan”, pp. 206, 525–526, 533; Novaković, *Zakonik*, pp. 47, 109, 111, 135; *Zakonik cara Stefana Dušana*, vol. III, pp. 114, 138–140, 150.

⁷⁰ Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, pp. 43–44; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

Simon (hagiography of his father Stefan Nemanja) wrote that Nemanja had called to a Council (*Sabor*) in Ras⁷¹ “dukes and soldiers” (војводи же и воини), but any legal distinction between them cannot be seen from the text.⁷² A difference in legal status between “lords, soldiers and poor people” (*vlatele, vojnika i ubogih ljudi*)⁷³ can clearly be seen from the Žiča charter: for unlawful divorce a lord had to give six horses, a soldier two horses and a “poor man” two oxen (Аще ли котори ће брѣцетъ се сио страшноју заповѣдь да прѣстоупає, симъ наказаниемъ да наказујетъ се: аще ли котори боудетъ штъ властель, да оузимајетъ се на немъ кралю .S. конь; аще ли штъ инихъ воиникъ, да оузимајетъ се на немъ по .S. кона; а аще ли штъ оубогихъ людји створитъ се, да оузимајетъ се на инихъ по .S. воли).⁷⁴ The lesser lords usually held small manors from the monarch, usually one village (article 75 of Dušan's Code), but the sources also mention cases when lesser lords had larger manors or even some small towns. Sometimes the monarch granted the lesser lord, together with his manor, to a monastery, as in the abovementioned example of Novak Petziya. Lesser lords very often lived on monastery manors and protected, as soldiers, a monastery and its superior (*igouman, hegoumenos*) from robbers. King Milutin, for example, ordered, in Sant George's charter, the lesser lords Manota and Kalodurd “to work for the Church, according to the military law” (да радбата цркви ё военически законъ). This means that they had to serve the Church according to the rules of the military class with a privilege that their horses “do not carry cargo” (а да имъ се конь не товари ни товара да воде). The same charter mentions certain Hranča, who had “to be the soldier of the Church” (да јестъ црковни воиникъ).⁷⁵ In January 1357, Emperor Uroš wrote to the Ragusans that he had sent his lesser lord Vukša to the market-town of Sveti Srđ⁷⁶ to protect Ragusan merchants from every disturbance (И тамо симъ послаль властелиниска царствва ми Влкш ё Свети Срѓа да стои и да ви чоба и блуде юд, всаке забаве).⁷⁷ However, the sources

⁷¹ Ras (Serbian Cyrillic *Pac*, Latin *Arsa*) is a mediaeval fortress in the vicinity of former market-place Staro Trgovište, some 11 km west from the modern day city of Novi Pazar in southern Serbia. Old Ras was one of the first capitals of the mediaeval Serbian State of Raška.

⁷² Jovanović and Juhas-Georgijevska, *Stefan Prvovenčani, Sabrana dela*, p. 50.

⁷³ Greek πέντες.

⁷⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 94.

⁷⁵ Ibid., pp. 324, 328.

⁷⁶ Sveti Srđ (Serbian Cyrillic *Ceemu Crđ*, Latin *St. Sergius*) was an important market-town in mediaeval Serbia on the left bank of the River Bojana, 10 km away from Skadar (Latin *Scodra*, Albanian *Shkodër*, Serbian Cyrillic *Скадар*, Italian *Scutari*, Turkish *İskodra* or *Arnavut İşkenderiyesi*, today in Albania), near the Benedictine monastery dedicated to Saint Sergius and Bacchus.

⁷⁷ Edited by M.A. Černova, *ssA* 9 (2010), p. 89.

also mention cases where some lesser lords tried to rob monasteries. In 1361, Emperor Uroš was visited by the superior John (кнр-јоанъ) and the monks of the Hilandar monastery who complained to him of some lords and lesser lords disturbing them (... и говорише царствоу ми како ихъ обиде властеле и властеличики).⁷⁸

3.3 *Hereditary Estate Holders (vlastela baštinici) and Fief Holders (vlastela pronijari)*

The division of nobles between those who were hereditary estate holders and those who were fief holders was derived according to the content of the ownership rights on the land.

The hereditary estate holders had full and unlimited ownership rights on their manor (*baština*). The expression *baština* (баштина or баџина) comes from the Old Slavonic word *bašta* (баџа) = father, and indicates the hereditary estate (*očevina*), with reference to the real estate which passes from father to the heirs of his body (analogous to the Latin term *patrimonium*, derived from the word *pater* = father, as well).⁷⁹ The lord who was an hereditary estate holder could freely consume his property: sell it, give it as a present, or alienate it in any other way, as is unequivocally stated in the article 40 of Dušan's Code: "and they may be disposed of freely, submitted to the Church, given for the soul or sold to another" (да съ вол'ны ными и под црксовъ дати, или за душъ ѡдати, или иномъ продати комъ любо).⁸⁰ *Baština* was a hereditary manor, and this was clearly pointed out in article 41: "If any lord have no child, or if he have it die, then upon his death the inheritance remains empty until there be found someone of his kin up to the third cousins, and to him shall the inheritance fall" (Кон властелинъ, не оузима дѣце, али пакы оузима дѣцъ, тере оумрѣ, по ёговѣ смртти баџина поуста остане, до гдѣ се ѿбрѣте ѿт ёгова рода до третїега братѹчеда тѣзи да има ёговѣ баџинѣ).⁸¹ However, according to article 48, "when a lord dies, his good horse and arms shall be given to the Tsar" (Къда

78 Novaković, *Zakonski spomenici*, p. 437.

79 See Mažuranić, *Prinosi*, pp. 45–48; P. Skok, *Etimologijski rječnik hrvatskoga ili srpskoga jezika* [Etymological Dictionary of Croatian or Serbian Language], ed. M. Deanović and Lj. Jonke, with the collaboration of V. Putanec, vol. I (Zagreb 1971), p. 120. Cf. R. Mihaljić and S. Ćirković, "Bašta" and "Baština" and R. Mihaljić, "Baštinič", in *LSSV*, pp. 30–34.

80 Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

81 Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 37; *Zakonik cara Stefana Dušana*, vol. III, p. 110. The phrase "up to third cousins" (*do tretiega bratučeda*) indicates the eighth degree of relatives.

оумрѣ властѣлињь, конъ добрїи и ѡроужїе да се даде царѹ ...),⁸² a kind of *heriot* in the terms of English law.⁸³ Dušan's Law Code guaranteed to the hereditary estate holders security of property using the phrase "those patrimonies are confirmed" (баџине да сѹ тврђа).⁸⁴ The Emperor could deprive the hereditary estate holder of his manor "only in the case of high treason, and not for any other trespass" (разве једине невѣре, а ни за јединое ино сугрѹшеније).⁸⁵

The institution of the fief came into Serbia from Byzantium and was named after the Greek word πρόνοια (*pronoia*), used in the Byzantine Empire from the 11th century.⁸⁶ The term *pronoia* was mentioned for the first time in Byzantine sources in the middle of the 11th century when Emperor Constantine IX Monomachos (Μονομάχος) gave the village of Mangana (Μάγγανα) as a fief to his prime minister Constantine Leichoudes (Λειχούδες), and for this occasion he issued an immunity charter (καὶ τὴν τῶν Μαγγάνων ἀνέθετο πρόνοιαν καὶ τὰ περὶ τὴν ἐλευθερίας αὐτῶν ἐνεπίστευσε ἐγγραφαι).⁸⁷ In Greek the word πρόνοια means *care*, *foresight*, *forethought*, *administration*, and in Church terminology *Providence*. The word attained its special meaning because the imperial government used to give small manors to be used (εἰς πρόνοιαν or κατὰ λόγον προνίας) and only the land acquired in that way was called *pronoia*.⁸⁸

Pronoia was mentioned in Serbia for the first time in the famous charter presented by King Milutin to the monastery of Saint George, near Skoplje. In

82 Burr, "The Code of Stephan Dušan", p. 207; Novaković, *Zakonik*, p. 42; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

83 For more details, see Chapter 14.

84 Articles 39 and 40. Burr, "The Code of Stephan Dušan", pp. 205–206; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, pp. 108, 110.

85 Emperor's Dušan charter to the lesser lord Ivanko Probištitović from 28 May 1350. Edited by V. Aleksić, *SSA* 8 (2009), p. 74.

86 The most important works on *pronoia* are: G. Ostrogorski, *Pronija, prilog istoriji feudalizma u Vizantiji i južnoslovenskim zemljama* [Pronoia, Contribution to the History of Feudalism in Byzantium and South-Slav Countries], complete works of G. Ostrogorski, book 1 (Belgrade 1969), pp. 119–342; P. Lemerle, "Recherches sur le régime agraire à Byzance: la terre militaire à l'époque des Comnènes", *Cahiers de civilisation médiévale* 2 (1959), pp. 265–281; A. Hohlweg, "Zur Frage der Pronoia in Byzanz", *BZ* 60 (1967), pp. 288–308; G. Ostrogorski, "Die Pronoia unter den Komnenern", *ZRV* 12 (1970), pp. 41–54; R. Radić, "Novi podaci o pronijarima iz prvih decenija XIV veka" ["New Data about Pronoiars from the First Decades of the 14th Century"], *ZRV* 21 (1982), pp. 85–93. On Serbian *pronoia*, see S. Novaković, "Pronijari i baštinici (spahiye i čitluk sahibije), Prilog k istoriji nepokretnе imovine u Srbiji XIII–XIX veka" ["Fief Holders and Hereditary Estate Holders, Contribution to the History of Real Estate in Serbia from the 13th–19th Centuries"], *Glas SKA* 1 (1887), pp. 1–102 = *Vaskrs države srpske i druge studije*, *KJP* 1 (Belgrade 1986), pp. 161–223.

87 *Ioannis Zonarae Epitomae historiarum*, ed. M. Pinder, III (Bonn 1897), p. 670, lines 7–9.

88 Ostrogorski, *Pronija*, p. 133.

the charter a certain Manota was mentioned, who acquired by dowry (прикия) the land of his father-in-law Dragota, in the place named Rečice. Later on, King Milutin decided to give the whole area to the monastery of Saint George. Making the revision of property rights on that territory, the King's servants established the fact that Dragota's manor was not a hereditary estate (*baština*) but a *pronoia* (fief), land held by military tenure (И Драготино мѣсто оу Рѣчицахъ вѣрѣте се царска прониа а на бащина Драготина). For this reason, Manota could not acquire Dragota's land by dowry unless he accepted the military service, as his father-in-law had.⁸⁹

The text of Saint George's charter clearly says that the fief holder (*pronijar*) did not have full ownership rights over the land. He had *ius utendi*—the right to use the property—and *ius fruendi*—the right to enjoy the fruits and profits of the property. However, he did not have the most important right—*ius abutendi* (the right to consume or destroy the property). A *pronoia* was land held by military tenure, and it could be succeeded only when a fief holder's heir accepted the military service. A fief remained always in the Tsar's *dominium*, and its tenant had no right of ownership and could not sell it or alienate it in any other way, as was strictly formulated in article 59 of Dušan's Code: "No man is free to sell or buy a fief, who has not an hereditary estate. And no man may subject fief-lands to the Church: and if they do so, it is not valid" (Пронијо да н'єсть вол'ни нико продати, ни коупити кто не има бащину. Ѧт пронијарске землје да н'єсть вол'ни нико подложити под црксовъ. ако ли подложи да н'єсть тврђадо).⁹⁰

Though the legal documents clearly mark a juridical difference between the hereditary estate (*baština*) and the fief (*pronoia*), it seems that in the practice of the 14th century that difference was not clearly marked. This fact could be seen in Dušan's Code: article 68 defining the amount of compulsory labours due from the villagers (*meropsi*) speaks only about the sevices due to the fief holder (*pronijar*) and not any lord (*vlastelin*). According to George Ostrogorski, this only proves that in Dušan's Code the word *pronijar* (fief holder) replaced the common term of feudal lord and that the relationships on manors, either being a fief or a hereditary estate, were in fact similar.⁹¹

As all the lords in Serbia were *tenants in capite*, a fief was generally given to its beneficiaries by the monarch himself. However, our sources show us an exception to that rule. We have a Greek chrysobull of Dušan's half-brother Simeon-Siniša, lord of Thessaly (Θεσσαλία) and Epiros ('Ηπειρος), confirming in January

89 Mošin, Ćirković, and Sindik, *Zbornik*, p. 324.

90 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 50; *Zakonik cara Stevana Dušana*, vol. III, p. 114.

91 Ostrogorski, *Pronija*, p. 293.

1361 the estate of his great constable⁹² John Tzaphas Oursinos Doukas. Among the great constable's manors, the chrysobull mentions the village of Phiatza (τὴν Φιάτζαν), which John Tzaphas gave as a fief (*δια προνοίας*) to his nephew and namesake John Tzaphas.⁹³ This fact puts forward the question whether in Serbia a lord could give a fief (*pronoia*) to his vassal, rather than only the monarch being able to do this. Discussing this problem, Stojan Novaković has pointed out article 106 of Dušan's Law Code, where among the lord servants (*dvorani*) are mentioned *pronijarevići* (sons of a fief holder). According to Novaković this is proof that the great lords in Serbia had their own fief holders (*pronijari*), who were their soldiers, although there is no source confirming such a relationship.⁹⁴ We can accept the interpretation that a *pronijarević* was a son of a fief holder, but nothing proves that he had his own fief (*pronoia*). On the contrary, being poor, without his own fief, a *pronijarević* (son of a fief holder) would have been obliged to become a lord's servant.⁹⁵

It seems that the case of John Tzaphas and his nephew is the only example of a fief (*pronoia*) given by a lord to his vassal. However, as Ostrogorski said, this sole case cannot be the basis for a general conclusion. John Tzaphas was a nobleman of foreign origin, living in Epiros, a region that was under a strong Occidental influence, and where social relations were very different from Serbian ones. Even Simeon-Siniša, Dušan's half-brother and lord of Epiros, did not consider himself a Serb,⁹⁶ and Epiros and Thessaly under his rule were in fact separated from Serbia.⁹⁷

⁹² Μέγας κονοσταύλος or κονοσταύλος, a count of the stable, later commander-in-chief of cavalry (from Latin *comes stabuli* and French *connetable*). For more details on this function see Solovjev and Mošin, *Diplomata graeca*, pp. 463–464.

⁹³ Solovjev and Mošin, *Diplomata graeca*, p. 234.

⁹⁴ Novaković, "Pronijari i baštinici", p. 36.

⁹⁵ Taranovski, *Istorija*, vol. 1, p. 38 says that if *pronijarević* (son of a fief holder) had his own fief (*pronoia*) he would not be called *pronijarević*, but *pronijar* (fief holder). Cf. Solovjev, *Zakonik cara Stefana Dušana*, p. 263, who adds that a fief (*pronoia*) could be inherited only by the eldest son. Other sons of a fief holder (*pronijarević*) did not want to work as commoners (*sebri*), so they entered into the service of the great lords, looking for an opportunity in war to become rich and acquire their own fief or hereditary estate. According to the author's opinion, that was the case of the lesser lord Ivanko Probištitović, who became rich being a Despot's servant, and bought lands and houses, which the Emperor confirmed to him as a hereditary estate.

⁹⁶ His signature on charters was ΣΥΜΕΩΝ ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΡΩΜΑΙΩΝ, Ο ΠΑΛΑΙΟΛΟΓΟΣ.

⁹⁷ Ostrogorski, *Pronija*, p. 301. Cf. S. Šarkić, "Legal Position of Noblemen in Serbian Mediaeval Law", *Publicationes Universitatis Miscolcinensis, Sectio Juridica et Politica*, tomus XXIII/1 (2005), pp. 111–121.

Emperor Dušan's Greek chrysobull from June 1352, to the monastery of Xenophontos (Ξενοφωντος) in the Holy Mountain, mentions "the land, held before by the knight Mouzakios in the area of Myriophytos" (τὴν γῆν, ἣν προκατεῖχε καβαλάριος ὁ Μουζάκιος ἐν τῇ τοποθεσίᾳ τοῦ Μυριοφύτου).⁹⁸ The Greek word καβάλαριος = knight (from Mediaeval Latin *caballarius* and French *chevalier*) designated in Byzantium and Serbia the honourable title for knights coming from West-European countries. However, it remained unclear whether Mouzakios' manor was a fief (*pronoia*) or hereditary estate (*baština*).

In the 15th century the threat of Turkish conquest caused the strengthening of the fief-system. That was the reason why fiefs were given not only to the lesser lords, but to the highest dignitaries as well.⁹⁹

98 Solovjev and Mošin, *Diplomata graeca*, p. 186. Cf. p. 448.

99 For examples, see Ostrogorski, *Pronija*, pp. 303–310.

Commoners (*Sebri, Себри*)

1 Name and Division

In the Serbian 14th-century sources *sebar* (себръ, Russian сябр, Lithuanian *sebras*, Modern Greek σέμπρος = commoner) was the general word for anyone not of noble or gentle birth. The expression was mentioned for the first time in the Serbian translation of Matheas Blastares' *Syntagma*. Accepting the main distinction in the law of persons according to the Roman jurist Gaius, that all men are either free or slaves (*Et quidem summa divisio de iure personarum haec est, quod omnes homines aut liberi aut servi sunt*),¹ the Serbian translator says that among those who are free exist *počteni* (пoчтeнни, noble, gentle, honest, in Greek texts ἐντικοι) and *sebri* (себри), in the meaning of common, vulgar, low, base (εύτελεῖς in the Greek original).² In several articles (53, 55, 85, 94 and 106) of Dušan's Law Code a commoner (*sebar*) is opposed to a nobleman (*vlastelin*), providing different penalties for the same trespasses. It is said in article 85 of the Prizren transcript, besides the other things: "if he be noble let him pay one hundred perpers: and if he be not noble, let him pay twelve perpers and be flogged with sticks" (ако боуđе властелинъ да плати .ђ. перперъ; ако ли не боуђе властелинъ, да плати .вѣ. перперъ и да се бїе стапи).³ However, all other manuscripts of Dušan's Law Code replace the words "if he be not noble" with "if he be a com-

¹ *Gai Institutiones*, I, 9. Gaius' division was accepted in *Epanagoge* ('Επαναγωγή = "Return to the point"), correctly *Eisagoge* (Εἰσαγωγὴ τοῦ νόμου = "Introduction to the Law"), a Byzantine legal miscellany from the 9th century, and in Greek translation the text is (*Epanagoge legis* XXXVII, 1, ed. J. and P. Zepos, *Ius Graecoromanum*, vol. II [Athens 1931, reprint Aalen 1962], p. 347): Τῶν προσώπων ἄκρα διαιρεσίς ἔστιν αὕτη· δτὶ τῶν ἀνθρώπων οἱ μέν εἰσιν ἐλεύθεροι, οἱ δὲ δούλοι. Although they are very similar, there are differences between the Latin and Greek texts: Gaius says *summa divisio de iure personarum haec est*, while the *Epanagoge* (*Eisagoge*) phrases it as τῶν προσώπων ἄκρα διαιρεσίς ἔστιν αὕτη. In Old Serbian, the text runs as: Иже лици краиние раздѣлиеніе, се юеста яко отъ члобѣкъ овь оубо соуть свобод'ны, овь же рабы (*Syntagma*, edited by S. Novaković, p. 249).

² Edited by Novaković, pp. 509–510. Cf. pp. 506 and 523. On the meaning of the word *sebar*, see S. Novaković, "Die Ausdrücke себръ, почтeн und мърот'шина in der altserbischen Übersetzung des *Syntagma* von Blastares", *ASPh* 9 (1886), pp. 521–523. Cf. S. Šarkić, "Divisione Gaiana delle persone in diritto medievale serbo", *Zbornik radova Pravnog fakulteta u Splitu* 43.3–4 (2006), pp. 355–360; Mažuranić, *Prinosi*, pp. 1295–1296; Skok, *Etimologijiski rječnik*, vol. III, p. 210.

³ Burr, "The Code of Stephan Dušan", p. 214; Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 122 (edition of Serbian Academy for Science and Art).

moner [*sebar*]". One may conclude that the expression *sebri* (commoners) was the general name for all dependent (mostly village) inhabitants of mediaeval Serbia. According to the opinion of Taranovski, the word *sebar* replaced the Old Serbian name for peasant—Сръбъ (Serb). That can be clearly seen from article 98 of Dušan's Code, speaking of commoner's plucking (*mehoskubina*), which was taken over from the chapter of the Gračanitza charter entitled "The Old Law for Serbs" (Законъ стары Срвљемъ).⁴

Although being dependent inhabitants, all the commoners (*sebri*) did not have identical social status. The sources allow us to differentiate between several categories of commoners: villagers (*meropsi*); vlachs (dependent shepherds); *otroci* (a kind of slave); dependent craftsmen and so-called *sokalnici*; and parish priests.

2 Villagers (*meropsi*, меропси)

2.1 Name and Social Status

Dependent villagers in mediaeval Serbia were usually called *meropsi* (меропси, singular = *meropah*, меропъхъ, мѣропъхъ). The meaning of the word *meropah* cannot be precisely defined, but it probably comes from the name of the Thracian tribe Meropes (Μέροπες), who lived in the Rodope Mountains (today in Greece).⁵ The term *meropsi* became common in 14th-century sources, but in the texts from the 12th and 13th centuries different names are used for the villagers: *parici* (from Greek πάροικοι = colonists, settlers, lit. "one who lives nearby", the general name for the dependent peasants in Byzantium from the 10th century through to the end of the Empire, analogous, but not identical, to the serfs of mediaeval Occidental Europe), *zemljani ljudi*, *zemaljski ljudi*, *zemljani* (literally "men of the land", really the agricultural labourers), *Srbli* (Serbs), or simply *ljudi* (people, singular = *čovek* or *človek*, meaning *man*).⁶ The expression *kmet* (κ'μετ, from Latin *comes*, or Greek κώμη = village), which in

⁴ Taranovski, *Istorija*, vol. I, p. 80.

⁵ Skok, *Etimološki rječnik*, vol. II, p. 409; N. Radojčić, "Iz istorije proučavanja naziva meropah" ["From the History of Studying of the Origin of Name Meropah"], *Južnoslovenski filolog* 18 (1949–1950), pp. 157–171; M. Blagojević, "Meropah", in *LSSV*, pp. 396–397.

⁶ See S. Šarkić, "Nation et humanité dans le droit médiéval serbe", in *Da Roma alla Terza Roma* (Rome 1992), pp. 63–71. Some legal documents, written either in Greek or Serbian, use the Greek word χώρα (chora, χώρα) = land, district, in the meaning of the assembly of the villagers (Solovjev and Mošin, *Diplomata graeca*, p. 24; Solovjev, *Odarbani spomenici*, pp. 129 and 170; Slaveva and Miljković-Pepek, *Spomenici na srednovekovnata i ponovnata istorija na Makedonija*, p. 289).

modern Serbian and Croatian historiography denotes villager, serf or villein,⁷ was used in that meaning only once—in the charter of Emperor Stefan Dušan to the monastery of Hilandar from “zabel” Kruščica, Ponorac and town-market Kninac (2 May 1355), where we read: “and from serfs one krina”⁸ (и на к'мечехъ криноу).⁹ The legal sources, from Nemanja's charter presented to the Hilandar monastery onwards, tell us that villagers (*meropsi, ljudi*) could belong either to the sovereign, to the Church, or to a nobleman.¹⁰ This triple division was confirmed by article 112 of Dušan's Law Code, which says: “If any man escape from prison ... be he the Tsar's man, or of the Church, or of the lord” (Кои чловѣкъ оутѣче ись тѣмнице ... или јесть чловѣкъ царства ми, или црквовны, или властѣл'сцы).¹¹

The *meropah* (villager) could dispose with his land, but his property right was, as Stojan Novaković suggests, a dependent hereditary estate burden with certain feudal duties.¹² The villager (*meropah*) could sell or alienate in any other way his land, provided that the supply of labour was maintained. This can clearly be seen from article 174 of the Code:

Workers on the land who have their own inherited property land, vineyards or purchased estate, are free to dispose of their own lands and vineyards, to give them as dowries, to give them to the Church, or to sell them, but there must always be a labourer on that place for him who is lord of that village. If there be no labourer in that place for him who is a lord of the village, the same lord is free to take the vineyards and the fields

⁷ The word *kmet* has different meanings in Slavonic languages. The oldest documents testify that a *kmet* was a member of the privileged class, a chieftain of a village, or even a judge. However, some sources from western parts of the Balkan Peninsula mention *kmets* as dependent villagers who work on a nobleman's manor. For more details see Mažuranić, *Prinosi*, pp. 508–512; Skok, *Etimologijski rječnik*, vol. II, pp. 106–107, and R. Mihaljić, “Kmet”, in *LSSV*, pp. 298–299.

⁸ *Krina* was a dry measure of capacity used for wheat. One *krina* had 24 *kabao* (16 kg). A *kabao* was a Serbian translation of the Byzantine measure called μόδιος.

⁹ Edited by M. Koprivica, *ssa* 15 (2016), p. 113.

¹⁰ See S. Šarkić, “Pravnoistorijska analiza Hilendarske povelje monaha Simeona (Stefana Nemanje)”, [“Legal-Historical Analysis of the Monk Simeon's Charter Presented to the Monastery of Hilandar”], in *Peta kazivanja o Svetoj gori* [The Holy Mountain—Thoughts and Studies, Volume Five] (Belgrade 2007), pp. 93–101.

¹¹ Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 86; *Zakonik cara Stefana Dušana*, vol. III, p. 130. “The word translated *prison* is *tamnica*, literally, a dark place” (Burr, comment on article 112). See Đ. Đekić, “Tammica”, in *LSSV*, pp. 725–726.

¹² Novaković, *Zakonik*, p. 173.

Людіе землане кои имаю свою бацинъ, землю и виноградъ, и коупленице, да съ вол'ни штъ своихъ виноградъ и штъ землю оу прикюю штдати или цркви подложити или продати; а винъ да юсть работникъ на томъзи мѣстѣ whомъ мѣзи господаръ чїе воудѣ село; аще ли не воудеть работника на whомъзи мѣсту ономоу господароу чиє воудѣ село да юсть вол'ни оузети whенъи виноградъ и нивіе.¹³

Article 67 adds: “such payment men make and work that they do, so much land let them have” (како платоу плакіаю и работоу работаю, тако-зи и землю да дръже).¹⁴

Villagers were not allowed to leave their land, and this rule was already stated in Nemanja's charter to Hilandar. Article 201 of Dušan's Code provides: “If a serf flee anywhere from his lord to another land, or to the Tsar's, where his master find him, let him brand him and slit his nose and assure that he is again his, but let him take naught from him” (Меропъхъ лко поетъгнє къде штъ своего господара оу инъ зем'ли или оу царевъ гдѣ га whбрѣте господарь нїеговъ, да га whсмѣдїи и nos мѣ раз'пори и Ѹем'чи да є whпеть еговъ, а ници до мѣ не оуз'ме).¹⁵ The social status of villagers did not change even in the 15th century. In a charter issued on 5 January 1407 to the monastery of Great Lavra (Μονὴ Μεγίστης Λαύρας) on Mount Athos, Despot Stefan Lazarević forbids the villagers (*meropsi*) leaving their manors (гдѣ когда чловѣка штъ нихъ находе, да га вѣціаю оу прѣд的决心наа своя сѣла, или хотеть, или не хотеть).¹⁶ However, as the Saint George's monastery charter says, the lord loses the right to claim his deserted villager if he spends “three years without a master” (кои юсть проводиль .Г. годица везъ господара); on the other hand, the right of the Church to claim its deserted man was never to be obsolete (да моу нѣкѣ стадрине).¹⁷

In spite of these very strict suppressions, villagers (*meropsi*) ran away in great numbers, either abroad or onto other manors. Concerning escaping abroad, the maritime cities (Kotor, Budva, Bar, Ulcinj) and especially Dubrovnik were very attractive for villagers, as they could find there a relative exemption from feudal duties. In order to stop that practice, King Dušan gave on 19 May 1334

¹³ Burr, “The Code of Stephan Dušan”, p. 533; Novaković, *Zakonik*, p. 136; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

¹⁴ Burr, “The Code of Stephan Dušan”, p. 211; Novaković, *Zakonik*, p. 55; *Zakonik cara Stefana Dušana*, vol. III, p. 116.

¹⁵ Burr, “The Code of Stephan Dušan”, p. 539; Novaković, *Zakonik*, p. 146; *Zakonik cara Stefana Dušana*, vol. III, p. 280 (edition of Serbian Academy for Science and Art). We must note that article 201 appears only in the manuscript of Rakovac from the year 1700.

¹⁶ Novaković, *Zakonski spomenici*, p. 498; Mladenović, *Povelje i pisma despota Stefana*, p. 248.

¹⁷ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 326, 327.

the Cape of Ston (*Stonski Rt*) and peninsula of Prevlaka (today both in Croatia) to the Republic of Dubrovnik, demanding from the Ragusan authorities “not to receive any man from my royal land, except those from my royal men, who already lived in Ston and Rt” (И јтък’мисмо се магю собом, кагу да не прѣимъ ниједнога чловѣка ѡд земље կралевства ми, лихъ унѣх’зи люди կралевства ми коихъ засташе ѧ Стонъ и ѧ Ртъ).¹⁸ However, escaping from one manor to another was much more common. Villagers were looking for manors where their social and economic position could be better. It seems that villagers often ran away from manors that belonged to worldly lords to monastery manors, because the Church lands did not have to provide soldiers to fight (article 26). On the other hand, in mediaeval Serbia there existed a permanent shortage of labour, so lords also sought to provide incentives to attract peasants to their manors. It seems as well that compulsory labours (*rabote*, *работе*)¹⁹ on the larger manors were lesser, so villagers from lesser lords’ manors ran away to great lords’ lands.

Ecclesiastical and worldly lords were often in dispute about deserted men, to the extent that the State power had to interfere on several occasions. King Stefan Dečanski, for example, in his chrysobull issued in April 1326 to the Episcopacy of Prizren, says the following: “And for the men who gave my royal majesty [to the Church] or my royal elder, and who ran away, let them get back, everyone on his place, and let no one support them, neither a lord, nor another church, not even me, the King” (И цю је придало կралевство ми или родитељ կралевства ми, людие кои се соу прѣгнѣ разышли да се повраждаю свакы на своје место, а никсто да ихъ не подрьжитъ, ни властелинь, ни ина црквь, ни само կралевство ми).²⁰ Dušan’s Law Code treats the problem of deserted villagers in several articles. Article 22 protects the lord’s serfs; it provided that the serfs (villagers, *meropsi*) deserting from the lord’s manor to Church land had to be sent back. The Code does not speak of the opposite case, probably because it rarely occurred that serfs would flee from Church lands to go onto those of worldly lords: “And serfs²¹ who live in the villages and hamlets²² of the

¹⁸ D.Ječmenica, “Druga Stonska povelja kralja Stefana Dušana” [“King Stefan Dušan’s Second Charter to the Ston Peninsula”], *ssa* 9 (2010), p. 53.

¹⁹ *Rabota* (работа, service) is the general Slavonic word for customary labour service, corresponding to the Greek word ἀγγαρεία.

²⁰ Edited by S. Mišić, *ssa* 8 (2009), pp. 17–18.

²¹ *Ijudije vlastelci*, lit. “lord’s people”.

²² The words translated as “villages and hamlets” are *selo* and *katun*. The former was the smaller administrative unit within the *župa* or district. The *katuns* were the summer huts of the Vlach and Albanian shepherds in the mountains. Burr, “The Code of Stephan Dušan”, p. 202.

Church, let them each go to his one lord" (И людје властѣл'ции, кои сѣде по црквених селѣх, и по катоунѣх, да походи вѣзакъ къ своемѹ господарѹ).²³ In article 115 we read: "If any man receive another from another estate who shall have fled from his own lord or court, if he produce the Tsar's letter of pardon, it shall not be contradicted. But if he show no pardon, let him be sent back" (И кѣсть чїега чловѣка прїель ис тауждѣ земли, а инь је побѣгъль шть сво-ега господара шт соуда ако дада книгѹ милостиѹ царевѹ да се не потвори; ако ли нѣ дасть милости да моу се врати).²⁴ However, in the second part of the Code (promulgated in 1354) Emperor Dušan solves this problem much more vigorously. With a solemn and resolute tone, article 140 orders: "My Majesty commands: No man may receive any man, neither I the Tsar, nor the Lady Tsaritsa, nor the Church, nor a lord, nor any other man whosoever may receive any man without my Imperial writ. And if he receive him, let him be punished as a traitor" (Повелѣва царство ми; никтоничїега чловѣка да не прима; ни царство ми, ни господжа царица, ни цркви, ни властѣлинъ, ни прочилюбо кѣ чловѣкъ да не прїиминичїега чловѣка безъ книгѹ царства ми; ако ли га кѣ прими такози да се каже любо како и невѣр'ныкъ).²⁵ It was obvious that the previous prohibitions did not stop villagers escaping. Therefore the Tsar had to strictly forbid all subjects from receiving deserted men and, for the first time, provide the following penalty: those who receive any man will be punished as a traitor (*nevernik*), meaning confiscation of the whole of their property: "And also in the market towns, county prefectures, and in the cities, if anyone receive any man, in the same way shall be punished and given up" (Такожде и тръговѣ и кнѧзовѣ и по градовѣ чїега чловѣка прима, такожде вѣразомъ да се кажи и вадад).²⁶ For those lords who harboured foreign serfs before the Council in 1354 (when the supplementary Code was promulgated) "shall be tried by the first court, as is written in the first Code" (да се ище прѣвымъ соудом, како пише оу прѣвымъ закон'никѹ).²⁷

²³ Burr, "The Code of Stephan Dušan", p. 202; Novaković, *Zakonik*, p. 24; *Zakonik cara Stefana Dušana*, vol. III, p. 104 (edition of Serbian Academy for Science and Art).

²⁴ Burr, "The Code of Stephan Dušan", p. 519; Novaković, *Zakonik*, p. 88; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

²⁵ Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 108.

²⁶ Article 141. Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, vol. III, p. 138.

²⁷ End of article 164. Burr, "The Code of Stephan Dušan", p. 532; Novaković, *Zakonik*, p. 130; *Zakonik cara Stefana Dušana*, vol. III, p. 148. The words "as is written in the first Code", concerns article 115.

2.2 Feudal Duties

Although we suppose that the monarch and nobles generally exacted more service from villagers than the Church, and consequently that there was a general desire to migrate to ecclesiastical estates, we cannot precisely prove it. The remaining legal sources speak only of monastery serfs' duties, which were not equal on every manor.²⁸ For illustration we shall quote the obligations of devoting a portion of time and labour by villagers on three different monastery's manors.

- a) According to the charter issued by King Vladislav (between 1234 and 1243) to the church of Holy Virgin on the River Bistrizza, the monastery serfs had the following duties: 1) to plough 7.5 *mats* (1 *mat* = 939.18 square metres),²⁹ what was equal to one day of working;³⁰ 2) to mow the hay until the work was done; 3) to reap for six days with the monastery providing food; 4) to do all other jobs ordered by the monastery prior; 5) to bring malt for beer, as much as the monastery's community needs; 6) to give on every Christmas *one uborak* (ѹборак)³¹ of hops; 7) to bring a bunch of pine-wood splinter that is used for firelighting (*breme luča*, врѣмѣ лѹчѧ); 8) to give six quern stones (*žr'di*, жѹди); 9) to give bread, made of one *kabao* (къбълъ) of corn (1 *kabao* = about 16 kg); 10) to give a lamb fur and one cord every year on Our Lady's Day fair; 11) to fish on holidays for the King and Archbishop as much as be ordered; 12) to give every tenth beehive.³²
- b) According to the charter issued by King Milutin to Saint Stephen monastery in Banjska (between 8 February 1314 and 12 March 1316) the villagers had to perform the following services: 1) to plough 8 *mats*; 2) to dig the

²⁸ The most important works on villagers' feudal duties are: S. Novaković, *Selo* [Village], second edition with the supplements by S. Ćirković (Belgrade 1965); M. Wlainatz, *Die agrarrechtlichen Verhältnisse des mittelalterlichen Serbiens* (Jena 1903); R. Grujić, *Eparhijska vlastelinstva u srednjovekovnoj Srbiji* [Eparchial Manors in Mediaeval Serbia] (Belgrade 1932); I. Božić, *Dohodak carski* [Tsar's Tribute] (Belgrade 1956); M. Blagojević, *Zemljoradnja u srednjovekovnoj Srbiji* [Agriculture in Mediaeval Serbia] (Belgrade 1973); L. Margetić, "Bilješke o meropsima, sokalnicima i otrocima" ["Notes on Villagers, Sokalniks and Otroks"], *ZRPFNS* 25.1–3 (1991), pp. 91–115. Cf. Taranovski, *Istorija*, vol. 1, pp. 51–71, and Janković, *Istorija države i prava*, pp. 26–33.

²⁹ S. Ćirković, *Mere u srednjovekovnoj srpskoj državi, Mere na tlu Srbije kroz vekove* [Measures in the Serbian Mediaeval State, Measures on Serbian Soil over the Centuries] (Belgrade 1974), p. 62.

³⁰ According to the researches of Blagojević, *Zemljoradnja*, pp. 337–402 and 428–429.

³¹ *Uborka* is a kind of measure for cereals, but we do not know its value exactly. The word probably comes from Greek–Latin *amphora*. See Skok, *Etimologiski rječnik*, vol. III, p. 534 and Mažuranić, *Prinosi*, p. 1483.

³² Mošin, Ćirković, and Sindik, *Zbornik*, pp. 166–167.

vineyard until Easter; 3) to mow hay for three days; 4) to plough one more mat in autumn using the monastery's food and to carry everything that ploughed; 5) to reap for three days; 6) to participate in the construction of a town; 7) to weed out the corn; 8) to do different jobs in the bakery; 9) to give every year malt and hops; 10) to give *oglav* (оглави);³³ 11) to give every fifth beehive; 12) to give to the Church every year lamb leather.³⁴

- c) The chrysobull of Emperor Dušan to the monastery of Saint Archangels Michael and Gabriel (1348) contains the chapter "The Law for Serbs" (Законъ Сръблюемъ). It states that on this manor the villagers (Serbs) had the following duties: 1) to provide work from every house two days in the week, whatever the prior of the monastery (*iguman*, игуменъ, from Greek ἴγούμενος) commands; 2) to plough and carry all the corn, with the monastery providing food; 3) to mow hay, as needed; 4) to work in the vineyard according to "the law in Studenitsa" (и виноград да тежи и всакъ по закону како оу Студеници);³⁵ 5) to give lamb leather and fur and 30 bundles of flax; 6) to give the tithe of corn or two dinars; 7) to carry wood on holidays; 8) to give pinewood splinter used for firelighting.³⁶

Differences in customary labour services (*rabote*) existed most probably on manors belonging to worldly lords too. An indication for such a conclusion can be found in article 68 of Dušan's Code, which begins with the words "The law for the villager on all land" (Мероп'хомъ законъ по въсъи земли). This important clause represents the Emperor's desire to equalize the amount of compulsory labour due from a villager (*meropah*) through the whole territory of the State. Admittedly, the text also speaks of obligations due to the fief-holder (*pronijar*), but the term *pronijar* in the 14th century replaced the common term of feudal

³³ The meaning of the word is not clear. F. Miklosich, *Lexicon palaeoslovenico-latinum* (Vienna 1862–1865), suggests that it could be Latin *capistrum* (*halter*).

³⁴ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 464–465.

³⁵ "The Law in Studenitza" here refers to the particular legal rules which regulated the position of dependent inhabitants of the monastery Studenitza (Serbian cyrillic Студеница) manor, established by a foundation charter issued by Stefan Nemanja. The text did not remain but it was reconstructed by S. Ćirković, "Студеничка повеља и студеничко властелинство" ("Studenitza Charter and Studenitza Manor"), *ZFFB* XII-1 (1976), pp. 311–314. See also M. Blagojević, "Zakon Svetoga Simeona i Svetoga Save" ["Law of Saint Simon and Saint Sabba"], in *Sava Nemanjić—Sveti Sava, istorija i predanje* [Sava Nemanjić—Saint Sava, History and Tradition] (Belgrade 1979), pp. 129–166.

³⁶ Edited by Mišić and Subotin-Golubović, *Svetosrpska hrisovulja*, pp. 110–113. Cf. R. Grujić, "Ekonomsko-pravni odnosi sela i seljaka zadužbine cara Dušana, sv. Arhandela kod Prizrena u 14. veku" ["Economic and Legal Relations of Villages and Villagers on Tsar Dušan's Foundation, Monastery of Saint Archangels near Prizren in the 14th Century"], in *Naše Selo*, ed. M. Stojadinović (Belgrade 1929), pp. 35–38.

lord. After publishing the first half of the Code (including article 68) the same duties were demanded from monastery serfs, which can be clearly seen from Emperor's Dušan charter to the monastery of Hilandar, issued on 2 May 1355.³⁷

As article 68 equalizes the obligations of all villagers we shall quote it in its entirety:

The law for the villagers on all land. He shall work for two days in the week for the fief-holder and let him pay him one imperial perper in the year and let him cut his [lord's] hay with all his household one day and his vineyard one day: and if there be no vineyard, let him do other works for one day. And what a villager do, let him store it all and according to the law nothing else shall be taken from him.³⁸

This means that a villager (*meropah*) had to work 106 days in the year for his feudal lord and to pay one perper to the imperial treasury. From the final sentence we can see the Tsar's intention to stop abuses and arrange all duties according to the law: any surplus of products the villager (*meropah*) could take for himself (и цю оуработа меропъхъ този въсе да стежи) and nothing else, against the law, would be taken from him (а ино прѣзаконъ, ницио да мѣ се не оуздме).³⁹

Besides the abovementioned services owed to their feudal lords, villagers had numerous obligations to the monarch (State power). The most important ones were the following:

- 1) To pay the Tsar's revenue, called *soće* (соће). The precise meaning and origin of the word remain unclear, although several hypotheses have been presented.⁴⁰ The tax could be paid in money (one perper) or be replaced

³⁷ Novaković, *Zakonski spomenici*, p. 431.

³⁸ Burr, "The Code of Stephan Dušan", p. 211.

³⁹ Novaković, *Zakonik*, p. 55; *Zakonik cara Stefana Dušana*, vol. III, p. 118 (edition of Serbian Academy for Science and Art).

⁴⁰ Novaković, *Zakonik*, p. 173, wrote that the Serbian word *soće* comes from the latin *soca*, *soccus* = plough. So, *soće* could be a land tax, given to the monarch, as a sign of recognition that the land is his property. Č. Mijatović, "Finansije srpskog kraljevstva, II. Izvori za finansijski dohodak u XIII i XIV veku" ["Finances of the Serbian Kingdom, II. Sources for Finance Revenue in the 13th and 14th Centuries"], *Glasnik SUD* 26 (1869), p. 214, found the similarity between *soće* and the Latin word *saccus* = purse, which was also a king's tax in some Occidental mediaeval States. Probably under his influence Novaković later on changed his mind and wrote that *soće* comes from the Byzantine tax called τῆς σακέλλης. "Soće i sokalnik u srednjovekovnoj Srbiji" ["Soće and Sokalnik in Mediaeval Serbia"], *Godišnjica N. Ćupića* 26 (1907), pp. 124–125. But, as Božić, *Dohodak carski*, pp. 34–35, pointed out, σακέλλη was not a tax at all, but rather a compartment of the imperial treasury

by one *kabao* (16 kg) of corn. The deadline for delivery of wheat was Saint Demetrios' Day (Δημήτριος, in Serbian *Mitrov dan*, Митровъ дњъ, 26 October) and the second period was at Christmas (article 198).⁴¹ *Soće* was collected from every home, be it lord's or commoner's. Villagers paid *soće* to their feudal lord, who would then give it to the Tsar.

- 2) *Obrok* (оброкъ, literally *meal*) or maybe *priselica* (прислница, преслица) was the duty of lodging and giving food to the monarch, his family, high court dignitaries and foreign ambassadors when they travelled through the country.⁴² The obligation was mentioned for the first time in the charter presented by King Vladislav (1234–1243) to the monastery of Holy Virgin Bistrička.⁴³ As *obrok* was a very hard duty for villagers, Dušan's Code tried to restrict it. Article 133 says: "An ambassador⁴⁴ proceeding from a foreign country to the Tsar, or from the Lord Tsar to his own lord, when he come to any village, let honour be done him, that he have enough; but he must only stay for dinner or for supper and go his way to another village" (Поклисарь ѿ грѣде изъ тѣхъ земліе къ царю, а или въ

(σέκρετον τῆς σακέλλης, σακέλλιον). Even the name *σακέλλη* the sources mention for the last time in 1145 (see F. Dölger, *Beiträge zur Geschichte der byzantinischen Finanzverwaltung besonders des 10. und 11. Jahrhunderts* [Leipzig 1927], p. 24), and it is hard to believe that the term, which thus disappeared in Byzantium in 12th century, could be accepted in Serbia in the 14th. Besides that, Byzantine sources translate *soće* as *σιτοδοσία*. See Solovjev and Mošin, *Diplomata graeca*, p. 304. Cf. S. Ćirković, "Jedan pomen soća na Peloponezu" ["A Mention of Soće on Peloponnese"], *ZRVI* 7 (1961), pp. 147–151, and M. Bartusis, "State Demands for the Billeting of Soldiers in Late Byzantium", *ZRVI* 26 (1987), pp. 116–117. Burr, "The Code of Stephan Dušan", p. 206 says for *soće*: "The word is the same as the Russian *socha*, which means both a two-shared plough and a plough-land. Cf. the *caruca* and the *carucate* of Domesday Book." See also the latest work on *soće* by M. Blagojević, "Soće—osnovni porez srednjovekovne Srbije" ("Soće—The Basic and General Tax in the Medieval Serbian State"), *Glas SANU, Odeljenje istorijskih nauka, knj. II*, 390 (2001), pp. 1–44, who suggests that 1 *kabao* (tub) had a weight in wheat between 61.5 and 62 kilos.

⁴¹ Novaković, *Zakonik*, p. 146; *Zakonik cara Stefana Dušana*, vol. III, p. 278. According to the Julian (Orthodox) Calendar, Saint Demetrios' Day is on 8 November and Christmas on 7 January. Article 198 mentions among taxes *harač* (драчь), a Turkish poll-tax (*haraç*, from Arab *harāq*). It is clear that this is the work of a later copyist (from 1700) and that the word could not occur in the pre-Turkish days.

⁴² Many Serbian scholars called this duty *priselica*, mentioned by articles 57, 125, 155 and 156 of Dušan's Code. However, M. Blagojević, "Obrok i priselica" ["Obrok and Priselica"], *IČ* 18 (1971), pp. 165–188, suggests that *priselica* (i.e. *preselica*, as Blagojević proposed reading it) was the common indemnity due to merchants and travellers attacked by brigands and thieves.

⁴³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

⁴⁴ The word translated as "ambassador" is *poklisar* from the Greek ἀποχριστάριος. Burr, "The Code of Stephan Dušan", p. 523.

гасподина цара къз своеому гospодину; гдѣ прїидѣ оу чїе любо село да мѹ се чины чьсть да моу ю въсега довол'но; нѣ да вебдоути или вечера, а да греде напрѣда оу ина селл). Article 194 in the Rakovac manuscript (189 in Novaković's edition) orders: "And the kennel-men, falconers, swineherds, wherever they go, nothing shall be given them" (И Чаремъ и соколаромъ и свиняромъ къде идѣ да им' се ница не даде). However, article 183 of the Bistritza transcript (189 in Novaković's edition) says different: "Wheresoever the horses and dogs and sheep of the Tsar go, whatsoever is written in the Tsar's books shall be given them and naught else" (Коуде гредѣ кони и пси и станове царевы, що имъ се пише оу книзе цареве да имъ се тв изъдасть а ино ница). It seems that the kennel-men, falconers and swineherds could enjoy the *obrok* only if they had the permission of the Tsar himself. Finally, article 110 says that "judges who travel about my dominions and in their own province may not take their maintenance by force" (Судїе коудѣ гредѣ по земли царства ми, и свои вѣласти да не бѣть вол'ни оузети вѣроха по силѣ).⁴⁵

- 3) *Pozob* (позобъ, from *zob* = oat) was the obligation of giving oats and hay to the King's or Tsar's horses, which were ridden by the monarch's retinue. Dušan's Law Code does not speak on this duty, but according to information given by some contemporary charters we can conclude that the Tsar wanted to limit the obligation of *pozob*. Tsar Dušan's chrysobull to the monastery of Saint Archangels Michael and Gabriel (1348) says that the village had to give one *krinu prevodnu* which came down to 24 Emperor's *kabao* (и да даје село крину прѣводнују једну, а оу кринѣ .кд. късли цареви).⁴⁶

45 Burr, "The Code of Stephan Dušan", pp. 523, 537, 518; Novaković, *Zakonik*, pp. 101, 144, 84; *Zakonik cara Stefana Dušana*, vol. III, pp. 136, 278, 128, vol. II, p. 218 (editions of Serbian Academy for Science and Art). Byzantine writer Theodore Metochites (Θεόδωρος Μετοχίτης), who was travelled through Serbia several times in 1299 negotiating the marriage between Emperor Andronicos II's daughter Simonis (Σιμωνίς, in Serbian Simonida) and Serbian King Milutin, gave in his Ambassador's Report (Πρεσβευτικός) very precious information on *obrok*. He said that in a delegation that started from Constantinople was one Serb, who was wondering to himself where he would find food during the journey. Certainly, from the local population, said the Serb, because in his country they have to give food to ambassadors who travel through Serbia. However, Metochites told his Serb travelling companion that such a custom did not exist in Byzantium. Edited by K.N. Sathas, *Μεσσαιωνικὴ βιβλιοθήκη I* (Venice 1872), p. 156 and L. Mavromatis, *La fondation de l'Empire serbe. Le kralj Milutin* (Thessaloniki 1978), p. 91. See also the Serbian translation with the comment by I. Đurić, in *VINJ*, vol. VI (Belgrade 1986), p. 84, n. 12.

46 Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 112. As the fur-

- 4) *Gradozidanije* (from *grad* = town and *zidati* = to build) was the obligation to reconstruct towns and fortresses, regulated by article 127 of the Code: “For building towns. Where a town or castle is overthrown, let the townsmen of that town rebuilt it and the district in which the town is situated” (За града зиданїе; где се градъ избоги или коула, да га направят грајдане тога зи града и жоупа ци јесте прѣдѣль тога града).⁴⁷ The burden of reconstruction would have been a heavy drain on the resources of townsmen, especially in sparsely populated districts, and therefore it was shared by the surrounding districts (*župa*), which enjoyed the protection of the city. The monastery manor’s serfs were exempt from this obligation, as some charters testify.
- 5) *Gradoblijudenije* was the service of providing the guard in towns and on roads in order to protect merchants and travellers from brigands and thieves. The responsible person for the functioning of the guards was the *kephale* (кефалїа, κεφαλїа, prefect), appointed by the Tsar as his representative over the towns (article 157). “My imperial guards” (сыци царства ми) are mentioned in Tsar Dušan’s charter to the monastery of Hilandar from 8 June 1355.⁴⁸ Alexander Solovjev suggests that this *bci* are identical to the Byzantine *tzakons*, regular city guards, submitted directly to the *kephale* (prefect) and who usually were mercenaries or hereditary soldiers.⁴⁹ If we accept this hypothesis, it would mean that in mediaeval Serbia, besides the serfs whose duty was to keep the towns and roads, there existed professional guards as well. In the charter of the nun Eugenia (Princess Militza, the widow of Prince Lazar) and her sons Stefan and Vuk presented to the Lavra (Λαύρα, a type of monastery) of Saint Athanasios

ther text of the charter says the villagers, besides oats, had to give some quantity of salt and several halters. All these duties together were considered as the *pozob*.

47 Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 97. According to the story of Byzantine Emperor and writer John Kantakouzenos, Emperor Dušan brought in 1350, from whole his State, 10,000 workers (άχθοφορούντων) in order to reconstruct the fortress of Berroia (Βέρροια). *Ioannis Cantacuzeni eximperatoris historiarum libri IV, graece et latine*, vol. I–III, ed. L. Schopeni (Bonn 1828–1832), vol. III, p. 124. See also *VIINJ*, vol. VI, pp. 503, 506 and n. 454 (comment by B. Ferjančić).

48 Novaković, *Zakonski spomenici*, p. 428. New edition by V. Petrović, “Povelja cara Stefana Dušana Hilandaru o selu Karbincima” [“The Charter of Emperor Stephan Dušan to the Monastery of Hilandar Regarding the Village Karbinci”], *SSA* 14 (2015), p. 108.

49 A. Solovjev, “Bci u Dušanovoj povelji g. 1355” [“Bci in Dušan’s Charter from the Year 1355”], *PKJIF* 6.2 (1926), pp. 187–188. However, in Tsar Dušan’s general chrysobull to the monastery of Hilandar, *tsakonstvo* (цакон’ство) was mentioned as the villagers’ regular duty of providing the guard. Edited by S. Mišić and M. Koprivica, *SSA* 14 (2015), p. 68. Cf. Đ. Bubalo, “B’ci”, in *LSSV*, p. 35.

on Holy Mountain (between 1 September 1394 and 31 August 1395), the duty of providing the guards is called *biglja* (бигља).⁵⁰

- 6) Military service (*vojevanje*) was the duty of noblemen (article 42), but they had to gather a regiment of armed villagers or other commoners (the number was in dependence on their power) and put them at the disposal of the Tsar (King). Churches and monasteries were exempt from military service, so their serfs did not have to execute that duty, but they probably protected the monasteries as armed guards. Despot Stefan Lazarević in the charter given to the Lavra of Saint Athanasios on Holy Mountain (20 January 1427) says: “and if My Lordship should go to war, let them [monastery’s serfs] go with My Lordship” (ако се би слоучило Господством ми самому гравомъ поки на воинку, и вни да погю з Господством ми).⁵¹ This means that in the 15th century, with the increasing threat of Turkish attack, the monastery’s villagers had to perform military service too.

Although Dušan’s Code was intended to equalize the amount of compulsory labours due from villagers across the whole territory of the State, charters issued after the proclamation of the Code speak of other services unmentioned in the Code. For example, in two charters presented by Despot Stefan Lazarević to the monastery of Hilandar (8 June 1411) and Despot Đurađ Branković to the monastery of Saint Panteleimon, a Rus’ establishment on Mount Athos (1428), we find *voinica* (войница), *voištatik* (войцатикъ) and *upča* (ѹпчѧ) as the taxes provided for the maintenance of a mercenary army.⁵²

In the districts conquered from Byzantium we find a very complicated fiscal system. The Greek charters of Serbian rulers speak of different kinds of duties: some of them are of Serbian origin, some are unknown to the Byzantine sources, whilst most of them are taken, with some changes, from Byzantine legal documents.⁵³

Duties of Serbian origin can be found in the chrysobull of Tsar Dušan to the monastery of Holy Virgin in Likousada (in Thessaly) from November 1348: the Emperor exempts the monastery of all charges and taxes (not specifying them at all) “and from *pozob* and so-called *priselica*” (καὶ τῆς ποζοβίτζης καὶ τῆς λεγουμένης πρεσέλιτζας).⁵⁴

⁵⁰ Novaković, *Zakonski spomenici*, p. 496; Mladenović, *Povelje i pisma despota Stefana*, p. 224.

⁵¹ Novaković, *Zakonski spomenici*, p. 500; Mladenović, *Povelje i pisma despota Stefana*, p. 260.

⁵² Novaković, *Zakonski spomenici*, pp. 466, 528. Cf. p. 531; Mladenović, *Povelje i pisma despota Stefana*, p. 193.

⁵³ See Lj. Maksimović, “Poreski sistem u grčkim oblastima Srpskog Carstva” [“Fiscal System in Greek Districts of the Serbian Empire”], *ZRVI* 17 (1976), pp. 101–125.

⁵⁴ Solovjev and Mošin, *Diplomata graeca*, p. 158. *Pozob* and *priselica* are two feudal duties very

In the ex-Byzantine territory, now under Serbian rule, we find some payments in kind, unknown to the Byzantine fiscal system, where all rates were collected in money. That is the reason why those payments in kind are mentioned only twice in the charters of Serbian monarchs. Firstly, in King Dušan's general chrysobull in favour of all monasteries on Holy Mountain from November 1345, the monasteries are exempted (among other) from "the demand of grain and cattle" ($\grave{\alpha}$ παίτησιν τοῦ σίτου καὶ τῶν ζώων).⁵⁵ Secondly, Tsar Dušan's chrysobull to the monastery Espigmenou on Holy Mountain from December 1347 mentions the exemption of "corn income" ($\sigmaυνδοσίας γεννημάτων$).⁵⁶ However, in the Greek charters of Serbian rulers, made upon the Byzantine model, to designate the taxes coming from grain income, the same technical terms as in the Byzantine charters, ξ εγαρατίκιον, σιταρκία,⁵⁷ are used. It is obvious that in the districts conquered from Byzantium, besides "grain taxes" (taxes coming from grain income), collected in money, there existed sometimes demands in grain as well.⁵⁸

Some of the demands that occur in the Greek charters of Serbian monarchs are similar to those in Byzantine charters, but with some differences, not only in the terms used for their designation but in their contents too. β έλανίδιον (fee paid to be allowed to feed hogs with acorns in a forest), for example, mentioned in the chrysobull of Tsar Simeon (Siniša) to the Epirot nobleman John Tzaphas (January 1361), is βαλάνιστρον in the Byzantine charters.⁵⁹ ϵ ξέτασις τοῦ ἀλλοτρίου ἀλατος ("control over somebody else's salt", probably the tax on salt, impor-

well known from Serbian legal sources. The meaning of *priselica* in the text of the charter (board and lodging for soldiers) is in accordance with the previous interpretations of that duty, contested by Miloš Blagojević, who thought that *priselica* was the common indemnity owed to the merchants and travellers attacked by brigands and thieves (see Chapter 5, note 42). However, Blagojević did not consider the Lykousada charter, and it is very hard to put his argument into accordance with the abovementioned information. Cf. B. Ferjančić, *Tesalija u XIII i XIV veku* [Thessaly in the 13th and 14th Centuries] (Belgrade 1974), p. 233, and Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", pp. 114–115 and n. 55.

55 Solovjev and Mošin, *Diplomata graeca*, p. 32.

56 Ibid., p. 114. The expression $\grave{\alpha}$ παίτησις was used in Byzantium to designate every demand in the most general sense. Σ υνδοσία meant a special obligation of a fiscal nature. See Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", p. 113 and n. 48.

57 Solovjev and Mošin, *Diplomata graeca*, pp. 442 and 491.

58 Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", p. 114. Maksimović suggests that this kind of demand could have the character of requisitioning for an army's needs (n. 52).

59 Solovjev and Mošin, *Diplomata graeca*, p. 236. On the different contents of this demand in Byzantium and Serbia, see p. 408.

ted into the monastery's manor), mentioned in Tsar Dušan's chrysobull to the monastery of Zographou on Holy Mountain (April 1346), could be connected with συστολὴ τοῦ ἀλλοτρίου ἀλατος of the Byzantine charters.⁶⁰ Εξέλασις ἀνθρώπων (preparing of men for military service) from Tsar Dušan's chrysobull to the monastery of Xenophontos on Holy Mountain (June 1352) represents a more common way of exacting services of Byzantine charters: ἐξέλασις πεζῶν (preparing of infantry), ἐξέλασις κονταράτων (preparing of spearmen) and ἐξέλασις πλωίμων (preparing of ships).⁶¹ Finally, in the Greek charters of Serbian rulers twice, and in the Byzantine charters once, we find demands of a local character called γουβελιατικός or corrupted κουβαλιατάκια,⁶² the meaning of which is unknown today.

This was not the end of labours and services due from the villagers, both in the Serbian parts of the Empire and the districts conquered from Byzantium. The list of demands of a local nature is very long, and it is impossible to quote them all.⁶³ Besides that, the possibility of introducing new demands always existed. That is clearly said in King Dušan's general chrysobull of all Holy Mountain monasteries: "no tribute will be ever demanded from the estates of the honourable monastery's communities on Holy Mountain Athos, neither from those which were asked and collected before, nor from existing ones, nor even from those which will be in future invented and collected" (οὐδὲ ἀπαιτεῖν ποτε ἀπὸ τῶν τοιούτων κτημάτων τῶν κατὰ τὸ ἄγιον καὶ σεβάσμιον ὅρος "Αθω σεβασμίων μονῶν κεφάλαιόν τι καὶ ἀπαίτησιν οὕτε ἀπὸ τῶν πρότερον ἐνεργουμένων καὶ ἀπαιτουμένων, οὕτε ἀπὸ τῶν νῦν, οὕτε ἀπὸ τῶν ἐσύστερον ἐπινοηθησομένων καὶ ἐνεργηθησομένων").⁶⁴

60 Ibid., p. 68. Cf. pp. 388–389.

61 Ibid., p. 188. Cf. p. 433. See also Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", p. 115 and n. 58.

62 Serbian charters: 1) Tsar Dušan's chrysobull to the monastery of Vatopediou on Holy Mountain from May 1346 (Solovjev and Mošin, *Diplomata graeca*, p. 80); 2) Tsar Dušan's charter to the monastery Xenophontos on Holy Mountain from June 1352 (*ibid.*, p. 188). The only Byzantine document is the charter of Emperor John v to the monastery of Hilandar from 1351 (*Actes de Chilandar*, ed. L. Petit, vv 17 (1911), № 138, p. 59). On the different interpretations of the meaning of γουβελιατικός see Solovjev and Mošin, *Diplomata graeca*, pp. 415–416. Cf. Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", pp. 113–123.

63 On other demands of a local nature, see Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", pp. 113–123.

64 Solovjev and Mošin, *Diplomata graeca*, p. 34.

2.3 Right to Be Protected

For understanding the social rights enjoyed by villagers (*meropsi*), extraordinary importance has to be attached to article 139 of Dušan's Code. Therefore we shall quote it in its entirety:

No master may do to a serf within the territories of my Empire anything that is contrary to the law, save only what I have written in the Code. That shall they do and give. And if he do anything to him against the law I enact, every serf is free to lay plaint against his master, be it the Tsar, or the Lady Tsaritsa, or the Church, or my lords or any man. No man is free to withhold a serf from my Imperial Court, only the judges shall judge him according to right. And if the serf win against his master, let my judge give warranty that this master pay all to the villein at the appointed time, and that his master do no evil to the villein after the sentence.

Мѣроп'хомъ въ земли царства ми да н'ѣсть вол'нъ господарь оучинити прѣзаконъ ница; развѣ цо юсть царство ми записало Ѹ законице, този да мѣ работы и дава; ако ли моу оучини цо беззакона, повелѣва царство ми, въсакы мѣроп'хъ да юсть вольнь прѣти се своимъ господаромъ, или съ царствоми, или съ господомъ царицомъ, или съ црквомъ, или съ властѣли царства ми; и съ кымъ любо да га н'ѣсть вол'нъ никто дрѣжати шт соуда царства ми; развѣ да мѣ соудїе соудѣ по правдѣ; и ако Ѹпри мѣроп'хъ господара, да оуем'чи соудїа царства ми, како да плати господар мѣроп'хъ въсе на рокъ; и потомъ да н'ѣсть вол'нъ wh'зи господарь оучинити зло мѣроп'хъ.⁶⁵

This means that the feudal master could demand from their serfs only what the Tsar had written in the Code. On the contrary, a villager could sue his lord, be it the Tsar himself, the Lady Tsaritsa, the Church or any nobleman. If the villager won against his master, the Imperial judge had to guarantee that the lord would pay all at the appointed time and that he would do no revenge to the villein.

It seems that Tsar Dušan, by introducing article 139 into his Code, wanted to protect villagers from the abuses of the Church and noblemen. The main reason was, probably, the aforementioned deficit in manpower. Besides that, article 139 shows the basic goal of the Code, to which most of its articles are devoted: regulating all social relations by law. It remained only a question of whether this provision was applied, and to what extent, that is to say, whether

⁶⁵ Burr, "The Code of Stephan Dušan", p. 524; Novaković, *Zakonik*, p. 106; *Zakonik cara Stefana Dušana*, vol. III, p. 138 (edition of Serbian Academy for Science and Art).

the proclaimed principle of lawfulness was really respected. In the absence of any surviving legal decisions, the only reliable material that could solve these questions, we cannot give an exact answer on this point.⁶⁶

3 Dependent Shepherds—Vlachs (Влаши, Βλάχοι)

3.1 Name and Way of Life

In mediaeval Serbia, the term *Vlachs* (Serbian *Vlasi*, Влаши, singular = *Vlah*, Влах, in Greek documents Βλάχοι) designated first of all dependent shepherds, who were, besides *meropsi* (villagers, serfs) the most numerous category of the rural population. The word *Vlach* comes from the name of some Celtic tribes, those that the Romans called *Volcae* and Germans *Walhos*. In German the expression became common for all Celts, and after the romanization of Gaul, for all Romans. South Slavs took the name *Vlach* from Germans and used it for the native population of Roman origin, who lived in littoral cities and the Balkan mountains. The expression *Vlach* (*Vlah*, Влахъ) was used sometimes by Serbs for Ragusans, such as in the treaty between the Serbian Great Župan Stefan Nemanjić and the city of Dubrovnik (Ragusa), from 1214–1217, surviving in two versions (Serbian and Latin). The Serbian text is as follows: И да не је мле ѣрељинъ Влахъ безъ съда ("It is forbidden to the Serb to capture a Vlach with no trial"), which was translated into Latin as *et ut Sclavus non apprehendat Raguseum sine iudicio*.⁶⁷ However, as time went by, the Roman population in mountains was slavicized. As their main occupation was cattle raising, the name *Vlachs* (*Vlasi*, Влаши) in mediaeval Serbia meant, mostly, shepherds. On the contrary, the Slavonic (Serbian) population was increasingly engaged in agriculture, so the term *Serb* (*Srbin*, Србљинъ, Серблинъ, Србинъ) was identified with labourers. In 14th-century charters (Saint Stephen's, Dečani's, Saint Archangels') the names Serbs (*Srbi*, Србли) and Vlachs (*Vlasi*, Влаши) did not designate ethnic groups, but the dependent labourers (Serbs) and the shepherds (Vlachs). Under the expression *Vlachs* was also meant some groups of Romanic peoples, especially Rumanians.⁶⁸

66 See S. Šarkić, "The Legal Status of Villagers in Mediaeval Serbia", in *Acta Universitatis Szegediensis, Acta Juridica et Politica, Tomus LXXV, Ünnepi kötet, Dr Blazovich László Egyetemi tanár 70. Születésnapjára* (Szeged 2013), pp. 578–590.

67 Mošin, Ćirković, and Sindik, *Zbornik*, p. 87. In the same meaning the term was used in four treaties of the Bosnian Prince (*Ban*, банъ) Matej Ninoslav with the city of Dubrovnik from 1232–1235, 1235–1236, 22 March 1240 and March 1249. See *ibid.*, pp. 140, 142, 154 and 182–183.

68 During the Turkish occupation, the Turks called Serbs *Vlasi*. Today the Muslims from Bos-

From the end of the 12th century the Vlachs changed their way of life: former nomads settled in hamlets called *katuni* (катоунни, singular = *katun*, катоунъ).⁶⁹ Serbian legal documents make clear the difference between labourers' villages and Vlachs' hamlets (*katuni*). It could be seen from the beginning of Tsar Dušan's charter presented to the monastery of Saint Archangels Michael and Gabriel (1348): the Tsar gives to the monastery "villages and manors, and Vlach's hamlets" (села и метохије и катоунъ влашкыихъ).⁷⁰

Vlachs spent only the wintertime in their hamlets. During the summer they migrated onto the manor to which they belonged in order to graze their cattle. Wandering from one pasture to another, Vlachs stopped for rest in some labourers' villages, which were obliged to offer them lodging (*prestajanje*). As this duty was hard for villagers, article 82 of the Code ordered: "When a Vlach or Albanian stays in a village, other herdsmen who come after them may not stay in the same village. And if any one stay by force, let him pay a fine and for grass he has consumed" (Гдѣ прѣстои влѣхъ, или алѣбанасинъ на селѣ; на томъ зи селѣ да не прѣстои дрѹгы греде за нимъ. ако ли по сиљѣ стане, да плати пот'кѹ, и цио је испасъль).⁷¹ The Tsar's intention was to distribute equally the duty of *prestajanje* (lodging) on all villages in the Empire.

Although the majority of Vlachs lived in hamlets (*katuni*), Saint Stephen's chrysobull (1313–1316) mentions Vlachs who have their villages (и к'то села имаю).⁷² This means that in mediaeval Serbia some Vlachs changed their occupation and became agricultural workers, living in their own villages.

Vlach's hamlets (*katuni*) kept some elements of autonomous organization from the earlier clan system, in spite of the fact that Vlachs were legally com-

nia call Christians *Vlasi*. On some Dalmatian islands the populations of certain cities are called *Vlasi*, as well as the inhabitants of Istria (in Croatia). In Hungarian, the word *Olasz* (coming from *Vlasi*) means "the Italians". See Skok, *Etimologijski rječnik*, vol. III, pp. 606–609, and Mažuranić, *Prinosi*, pp. 1584–1586. Cf. Z. Mirdita, *Vlasi u historiografiji* [Vlachs in Historiography] (Zagreb 2004) and P. Nasturel, "Les Valaques balcaniques au X–XIII siècles", *Byzantinische Forschungen* 7 (1979), pp. 89–112.

⁶⁹ According to the interpretation of N. Jokl, *Linguistisch-kulturhistorische Untersuchungen aus dem Bereich des Albanesischen* (Berlin 1923), pp. 172 and 320, the word comes from Albanian *katund-i*, meaning *Gebiet, Dorf, Stadt* (district, village, town). In modern Albanian, the word *katund* means village (the other name for village is *fšat*, coming from Latin *fossatum*). Some scholars think that the word is of Greek origin (κατούνα). See Skok, *Etimologijski rječnik*, vol. II, p. 64.

⁷⁰ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 88.

⁷¹ Burr, "The Code of Stephan Dušan", p. 213; Novaković, *Zakonik*, p. 65; *Zakonik cara Stefana Dušana*, vol. III, p. 122 (edition of Serbian Academy for Science and Art).

⁷² Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

moners (*sebri*) and had feudal lords.⁷³ This can already be seen from the oldest Serbian legal document: a charter presented by Stefan Nemanja to the monastery of Hilandar (1198–1199). Listing all the goods that he gave to the monastery, among others, Nemanja says: “and from Vlachs the judiciary of Rade and Đurđe, and total 170 Vlachs” (а ѡд Влахъ Радово соудбство, и ђурђево. А вьсеге Влахъ .Р.О.).⁷⁴ This means that Nemanja gave to Hilandar 170 Vlachs whose chiefs were Rade and Đurđe, who had the right to act as judge in some matters to their shepherds. What kind of jurisdiction they had remains unclear. Article 146 of the Code mentions prefects (*knezovi*), lieutenants (*premićurije*), bailiffs (*vladalcī*), reeves (*predstajnici*) and headmen (*čelnici*), “who administer villages and mountain hamlets” (Такожде кнезовѣ и прѣмикюре, и владалци, и прѣдстаници, и челници кои се вѣрбтаю сели и катуни, вѣладающе),⁷⁵ but without specifying the competencies of hamlet chiefs.

3.2 Feudal Duties

The main duty of Vlachs was so-called *travnina* (from *trava* = grass, Greek ἐννόμιον, Latin *herbaricum*)—indemnity from using the noblemen’s pastures. Saint George’s chrysobull says that everyone who uses the pasture on Church mountains has to pay for grazing-rights, according to the law (Такожде кто исплани-ноше на црквенои плаанинѣ да подаде цркви трапининоу Закону).⁷⁶ However, the charter does not specify the law, probably because it was a generally known custom. Later documents speak of grazing-rights (*travnina*, *трапинина*) more preciously. The Dečani charter refers to an old law of “travnina” “of the flock,

73 On the organization of Vlachs’ hamlets (*katuni*) see Novaković, *Selo*, pp. 29–52 and 161–173; M Filipović, “Struktura i organizacija srednjovekovnih katuna” [“Structure and Organization of Mediaeval Hamlets”], in *Naučno društvo sr BiH* (Sarajevo 1963), pp. 45–112; D. Kovačević, “Srednjovjekovni katuni po dubrovačkim izvorima” [“Mediaeval Hamlets according to the Ragusan Sources”], in *Naučno društvo sr BiH* (Sarajevo 1963), pp. 121–140; B. Đurđev, “Teritorijalizacija katunske organizacije do kraja xv veka” [“Territorial Organization of Hamlets until the End of the 15th Century”], in *Naučno društvo sr BiH* (Sarajevo 1963), pp. 143–196. Cf. R. Katić, *Stočarstvo srednjovekovne Srbije* [Cattle Raising of Mediaeval Serbia] (Belgrade 1978), pp. 9–30, and B. Ferjančić, “Stočarstvo na posedima svetogorskikh manastira u srednjem veku” [“Cattle Raising on the Estates of the Athonite Monasteries in the Middle Ages”], *ZRVI* 32 (1993), pp. 35–127.

74 Mošin, Ćirković, and Sindik, *Zbornik*, p. 69.

75 Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 113; *Zakonik cara Stefana Dušana*, vol. III, p. 140 (edition of Serbian Academy for Science and Art). John Cantacuzenos mentions a certain Martzelat, chief of some Serbian shepherds near Berroia, who helped him to re-conquer the town from Serbs (see *VIIINJ* vol. VI [Belgrade 1986], p. 499, n. 449). But even the Emperor-writer does not specify the competences of this Martzelat.

76 Mošin, Ćirković, and Sindik, *Zbornik*, p. 327.

2 rams and 2 lambs and a cheese and a dinnar" (од стада .в. об'на и .в. јагњети, и сирь, и динарь).⁷⁷ Dušan's Code (article 197) has a different order: "When a man come to any lord for the winter, let him give grass-tribute: for one hundred mares, a mare; for sheep, a ewe with lamb, and for one hundred cattle, an ox" (Коемоу властелинъ прїиде да зимбѣ чловѣкъ, да дава травнинъ: штѣ ковиль ковилъ, ѿд ѿв'ца ѿвцѣ съ аган'цемъ, и штѣ говедъ говедо).⁷⁸

Besides grass-tribute (*travnina*), Vlachs had to give a certain quantity of cattle, and this was not the same on all manors. The Saint Stephen's and Archangels' charters say "that they have to give every summer for 50 sheep a ewe with a lamb and one more barren" (А се законъ Влахомъ... да даю на всако лѣто штѣ И. ѿв'цу съ јагњетемъ а дроугоу таловоу).⁷⁹ The charter of King Dušan giving to the monastery of Hilandar the church of Saint Nicolas in Vranje (1334–1345) established the obligation of two horses every year (И да озима игѹмни хиланьдар'ски .в. кониа на годище).⁸⁰ Saint Stephen's charter orders that every man (Vlach) has to give five lamb leathers annually (И да даю цркви на годище всакъ чловѣкъ по .в. јагњетинѣ).⁸¹ And Saint Archangels' chrysobull exempts the poor Vlachs from these demands: "And the Vlachs, who are poor, let them carry the Church wool, according to the orders of the monastery prior" (а Власи кои соу оубози да теже вльноу црквеноу, що имъ повелѣва игоумни).⁸²

Besides the grass-tribute, Vlachs owed some compulsory labours to the Church as well—to graze Church mares, sheep, swine and oxen—and had the obligation to compensate for lost cattle (И ако по грѣху изгинуу ѿу цркве ковыле да се даде слагајуки .е. тоу ковылоу пръво годище, а веќе ница).⁸³ For their work of grazing the Vlachs got from the monastery so-called *mesečina* (from *mesec* = month), food to eat, and so-called *beleg* (белегъ, literally mark, stamp),⁸⁴ a salary in cattle. The Vlachs had to follow the monastery superior (*iguman*, игоуменъ) and steward (*ikonom*, икономъ) on their travels and to "carry

77 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 56; Novaković, *Zakonski spomenici*, p. 647, para. vi.

78 Burr, "The Code of Stephan Dušan", p. 538; Novaković, *Zakonik*, p. 145; *Zakonik cara Stefana Dušana*, vol. III, p. 278 (edition of Serbian Academy for Science and Art).

79 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 467–468; Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 113.

80 Edited by S. Marjanović-Dušanić, "Povelja kralja Stefana Dušana o poklanjanju crkve Svetog Nikole u Vranju manastiru Hilandaru" [“Charter of King Dušan Giving the Church of Saint Nicholas in Vranje to the Monastery of Hilandar”], *SSA* 4 (2005), p. 73.

81 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

82 Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 113.

83 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

84 See M. Blagojević, "Beleg", in *LSSV*, pp. 38–39.

the salt and all the monastery's needs" (*И да гредъ съ игумномъ и съ икономомъ камо имъ повели. И да носе соль и потрбебъ манастир'скъ в'сакъ*).⁸⁵ This means that Vlachs had to give packhorses and equipment for transport of salt from the littoral to the interior of the country.

Although the survival legal documents mention only the monastery Vlachs, dependent shepherds lived on worldly lord's manors as well, and also on the Tsar's estates. This fact can be indirectly seen from Tsar Dušan's chrysobull given to the monastery of Saint Archangels Michael and Gabriel, according which Vlachs have to give to the Church in the same way "as they used to give to me, the Tsar" (*како соу давали царствоу ми*).⁸⁶

The legal status of Vlachs was the same as the legal status of villagers (*meroppsi*). This can be clearly seen from the text of the first Žiča chrysobull (1219–1220), which mentions tributes "which come either from Vlachs, or from villagers" (*њь утю доходи или ут Влах, или землјана*).⁸⁷ Like villagers, Vlachs could not leave the land: Nemanja's charter to Hilandar already forbade Vlachs and villagers from running away from their manors. If someone fled from their lord, they had to be turned back. Article 32 of Dušan's Code adds: "Ecclesiastical persons who administer Church villages and Church lands and drive the Church labourers and shepherds away, those who have driven the men away, let them be bound and their land and people taken from them; and let the Church keep them until they have restored the men whom they drove away" (*Людје црковни, кои држе црковна села, и земли црковне; а прогнали соут мероп'хе црковне, или влахе; шнизи коине съ раз'гнали людји, да се свежъ и да им' се оузме земља и людје; и да их држи црква до где сконце людји кое съ раз'гнали*).⁸⁸

However, the social position of Vlachs was in fact much better than the position of villagers. This is the reason why lot of villagers (*meroppsi*) tried to get into the class of Vlachs through marriage. But because of a permanent manpower deficiency, charters vigorously forbade this practice. Saint Stephen's charter says: "It is forbidden for a Serb [villager] to marry a Vlach. If he do it, without a knowledge of monastery prior, let him be captured and tied, he and his Vlach-wife, and let him get back, without his will on his father's place" (*Србинъ да се не жении оу Влашевхъ. Ако ли се жении оу невѣсть игоум'новоу, да се уграбии и свеже и унъ Влахъ ут кога се боуде жениль, и да се вратин беъ воле ѿпеть на*

⁸⁵ SSA 4 (2005), p. 73.

⁸⁶ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 113.

⁸⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 92.

⁸⁸ Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 30; *Zakonik cara Stefana Dušana*, vol. III, p. 106 (edition of Serbian Academy for Science and Art).

врънно място).⁸⁹ The Dečani charter completes this decree, saying: “if he [villager] marry her [Vlach-woman] let her get into villagers” (ако ли се вжени да јо веде оу мѣроп’хе).⁹⁰ Thus a Vlach-woman who married a villager (*meporah*) went through the marriage into the villager’s class. Saint Stephen’s charter makes an exemption to that rule: villagers who have married Vlachs long before the proclamation of this decree, and who have lived among Vlachs, could stay with Vlachs, but they could not be soldiers. The charter calls this category of villagers *starinici* (старин'ници, from *star* = old).⁹¹

Saint Stephen’s charter marks a difference between Vlachs soldiers and so-called *kelatori* (келатори).⁹² The above information poses two questions. Did Vlachs have a military service? And who were the *kelatori*? Stojan Novaković’s understanding of the word *kelatori* led him to believe that Vlachs had to exercise a military service, either as soldiers or as field-train soldiers (*komordžije*).⁹³ However, military service was a duty of noblemen, who had to bring a certain number of commoners. As the Church was exempt from military service, Church Vlachs could not be State-soldiers.⁹⁴ It seems that the word *soldier* (воинникъ) in Saint Stephen’s charter designates those Vlachs, who as riders either followed the monastery superior on the road or kept the horse herd. For such an interpretation we can find arguments in the charters. King Dušan’s charter to the monastery of Hilandar speaks of Vlachs who are appointed as soldiers (Кон се имендје воинникъ).⁹⁵ Saint Stephen’s charter says that “the soldier has to graze the stallions” (а воинникъ да пасе пастоухе).⁹⁶

More complicated is the question of the meaning of the word *kelator* (or *célator*, plural = *célatore*). Teodor Taranovski says that the meaning of the word cannot be defined: however, *célatore* were all Vlachs who were not soldiers.⁹⁷ Stojan Novaković finds that the word *célator* comes from Greek κελλάρι (cellar), meaning stable or lumber-room. According to him *kelatori* would be the people whose duty was to guard or protect something.⁹⁸ Sextil Puscariu says

89 Mošin, Ćirković, and Sindik, *Zbornik*, p. 464.

90 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 134.

91 Mošin, Ćirković, and Sindik, *Zbornik*, p. 464.

92 Ibid.

93 Novaković, *Stara srpska vojska*, pp. 70, 131–132.

94 Taranovski, *Istorija*, vol. I, p. 73.

95 *SSA* 4 (2005), p. 73.

96 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

97 Taranovski, *Istorija*, vol. I, p. 73. The author takes his argumentation from Saint Stephen’s charter.

98 Novaković, *Selo*, p. 192, n. 69. In Serbian legal documents the word *célar* in the meaning of small room is mentioned in the contract made by Radosava, wife of Radonja Mirković,

that the term *kelator* comes from Rumanian word *căle* (*callis*) = road, *căl* = horse. So, *calator* means traveller, corresponding to the Greek word ὁδίτης and Old Serbian *ponosnik* (понасникъ). A *kelator* was a person who had to transport on his horse various goods, the duty that was called in Serbian legal sources *ponos* (понасъ).⁹⁹ However, a provision of Saint Stephen's charter contradicts this interpretation: "Soldiers and kelators as well, to carry the cheese from the mountain; and kelator to graze [sheep] and wool to cut, and soldiers to graze the stallions. And when the bad times come a soldier and a kelator as well to keep the sheep" (и воинникъ и келаторъ да нош сирене с пладни, и келаторъ да пасе въльноу стриже, а воинникъ да пасе пастоухе, а оу зло врѣме и воинникъ и келаторъ да греде къ швцамъ).¹⁰⁰ In spite of scholars' efforts, it seems that the meaning of the word *kelator* remains unclear.

Beside cattle breeders—Vlachs—the charters mention the existence of shepherds who were villagers (*meropsi*) and who had to keep monastery's cattle. According to the information of King Milutin's chrysobull issued to the monastery of Hilandar (1303–1304; after 1331) the difference between those shepherds and Vlachs was obvious. It is said: "My Royal Majesty saw that the Holy Church gives annually twelve stallions to the shepherds as a *beleg* [payment in cattle], and for that reason I allowed the Vlachs to graze the Church mares, and to take no *beleg*; if they loose something they have to pay to the Church 10 perpers for one horse and 20 perpers for one mare" (И паке видѣ кралевство ми юре да је светата цркви на годище .ВІ. ждрѣбца пастыремъ бѣлѣгou. Да того ради приложихъ Влахе, и ине Влахе избрахъ юд црковныхъ Влахъ, да пасоу кобылие црковне, а да не оужимаю тъ юд цркве бѣлѣгou нищто; паче ако ѿтъ изгубетъ, да плаќајут ют себѣ конь по .Л. перперъ а кобылоу по .К. перперъ, да плаќају цркви).¹⁰¹ So, the shepherds got *beleg* and were not responsible for the loss cattle, and Vlachs did not get *beleg* and *mesečina*, so it is difficult to define a general rule concerning the difference between shepherd-villagers and shepherd-Vlachs.¹⁰²

who sells her house in Trepča (today in Kosovo) to the monastery of Saint Paul on Holy Mountain (1438). Radosava says that she will keep one *éclar* (small room) of the house until the end of her life, where she and her sister will live. Editions of the document: Solovjev, *Odabrani spomenici*, p. 206; Đ. Bubalo, *Srpski nomici* [*Nomiks in Medieval Serbia*] (Belgrade 2004), p. 260.

⁹⁹ S. Puscariu, *Ethymologishes Wörterbuch der rumänischen Sprache* (Heidelberg 1905), see *călator*. Cf. Katić, *Stočarstvo*, p. 25 sq.

¹⁰⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

¹⁰¹ Ibid., p. 377.

¹⁰² See S. Mišić, "Zakonske odredbe o Vlasima u poveljama Nemanjića" ["Legal Provisions on Vlachs in Nemanjić's Charters"], *Braničevski glasnik* 7 (2010), pp. 36–47.

4 Slaves

4.1 Names

The lowest rung on the social ladder in mediaeval Serbia were the class called *otroci* (singular *otrok*). The word *otrok* (ѹтрокъ) primarily means a child or a boy; it is obsolete in Serbian, but survives in Czech as a normal word for a slave and in Slovenian, Russian and Polish as a word for a child or a boy. The legal status of *otroci* was similar to slaves, but because the *otroci* had certain personal rights there remain many questions concerning their legal status. Serbian legal sources also use other words for slaves: *rab* (ѹањь, in modern Serbian *rob*, *рођ*), *čeljadin* (ѹељадинь) and *čeljad* (ѹељадь).

When the translator of the *Nomokanon* of Saint Sabba faced the several Greek terms denoting the word slave, male or female (ἀνδράποδον, δοῦλος, οἰκετής, παῖς, θεράπαινα), he simplified the Greek names, reducing them to *rab* (male) and *raba* (female).¹⁰³ The word *rab* (ѹањь) was present in the *Syntagma* of Matheas Blastares, as well. In chapter D-11 (Д-11) we read as follows:

The main distinction in the law of persons is that all men are either free [свобод'ны] or slaves [ѹањы]. Freedom is one's natural power of doing what one pleases, save insofar as it is ruled out either by coercion or by law. Slavery [ѹађота] is the institution of the law of the peoples [иезическаго закона, ἐθνικοῦ νόμου, *iuris gentium*] and consequence of war contrary to the natural law [иестъственномоу закону, φυσικοῦ νομίμου, *iuris naturale*], because nature has created all men free. The free are either freeborn [благородніе, εὐγενεῖς, *ingenuus*] or freemade [освободніе, ἀπελευθέρους, *libertinus*]. The freeborn were born of free parents and were not grown under the slave yoke [и не оу ѫар'ма ѹађоти въкоусивъ]; the freemade was born of a manumitted slave [освобод'нии же иже отъ ѹађа освобожден'наго ѹодиви се].¹⁰⁴

¹⁰³ See M. Petrović, *Krmčija Svetoga Save o zaštiti obespravljenih i ugroženih* [Krmčija of Saint Sabba on Protection against Deprivation of Rights and Being Threatened] (Belgrade 1990), pp. 53–74.

¹⁰⁴ Edited by Novaković, p. 249. See T. Taranovski, “Političke i pravne ideje u Sintagmatu Vlastara” [“Political and Legal Ideas in Blastares’ *Syntagma*”], *Letopis Matice Srpske* 317 (1928), Prilozi Letopisu, pp. 160–170; S. Šarkić, “Gajeva podela lica u srpskom srednjovekovnom pravu” (“Gaius’ Division of Persons in Serbian Mediaeval Law”), *ZMSKS* 4–5 (2002–2003), pp. 107–112; and S. Šarkić, “Ideas of Stoic Philosophy in Serbian Mediaeval Law”, *Istraživanja, Journal of Historical Researches, Faculty of Philosophy, University of Novi Sad* 29 (2018), pp. 39–47.

It seems that this distinction, taken from the Roman lawyers Gaius¹⁰⁵ and Florentinus¹⁰⁶ through the *Epanagoge/Eisagoge*, had a more declarative character: the legal sources in mediaeval Serbia do not allow for the conclusion that the population had been divided into free persons and slaves. However, Tsar Dušan's and King Uroš's charters, giving the church of Saint Nicholas under the mountain Kožalj to the Metropolitan of Serres Jacob and to the Saint Archangels' monastery in Prizren (1353), mentions the slaves (*rob*, not *rab*) Počrnja and Tzuknalija (ροβ Ποχρνια, ροβ Τζουκναλια).¹⁰⁷ Was the legal status of those slaves different from the status of *otroci*, or was this an exceptional use of the term *rob* (slave)? It is difficult to say.

The translator of the *Nomokanon* uses once the word *čeljadin* (челадинъ) to translate the Greek word ἀνδράποδον (a second time he translates the same word as *rab*, ράβъ). By using the term *čeljadin*, the translator wanted to keep alive its archaic meaning, according to which ἀνδράποδον is a slave in the classical sense, that is δοῦλος, but not by birth; in fact, such a man became first a prisoner of war and then a slave that was sold as such.¹⁰⁸ *Čeljad* and *čeljadin*, in the meaning of slaves, are mentioned twice in the treaties with Dubrovnik. The first time, Andrija Zlat (Dauro), the Prince (*Knez*) of Dubrovnik together with all nobles and community of the Republic, swears that he will keep peace and friendship with the Serbian King Uroš I (August 1254), and among others are mentioned "slaves from Your Royal State" (челада, земље краљевства ти). King Milutin in the treaty with Dubrovnik (14 September 1302) says that the Ragusans have to appear before the King's court for crimes of treason, murder, horse-thief and *čeljadin* (crimes concerning the slaves).¹⁰⁹ However, the terms *rab* and *čeljadin* were soon abandoned in Serbia; 13th- and 14th-century sources speak about *otroci* as the lowest class of Serbian society. Whether they were slaves or not is a very difficult question.

¹⁰⁵ Gaius, *Inst.* I, 9–11; *Iust. Inst.* I, 3; D. I, 5, 1.

¹⁰⁶ D. I, 5, 3–4.

¹⁰⁷ Edited by G. Bojković, "Povelja cara Stefana Dušana i kralja Stefana Uroša mitropolitu seriskom Jakovu" ["Charter of Emperor Stefan Dušan and King Uroš to the Metropolitan of Serres Jacob"], *SSA* 15 (2016), p. 94.

¹⁰⁸ The root of the word *čeljadin* is *čeljade* (man or child) resulting from the collective noun *čeljad* which in later centuries occasionally appears along with the old meaning "slaves", although it most often designated the "member of family" just as it does today. The expression *čeljadin* survived in Russian manuscripts in its archaic form and meaning of the word ράβъ (slave). See M. Petrović, "Čeljadin" ["Tchelyadin"], in *O Zakonopravilu ili Nomokanonu Svetoga Save*, pp. 53–65.

¹⁰⁹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 216 and 346.

4.2 Social Status

The best experts in Serbian mediaeval law, such as Stojan Novaković, Konstantin Jireček, Teodor Taranovski, Aleksandar Solovjev, Nikola Radojčić and Dragoslav Janković, thought that *otroci* were some kind of mediaeval slaves or a category of population similar to slaves.¹¹⁰ On the contrary, Nikola Krstić wrote that in mediaeval Serbia there was no slavery, so the *otroci* could not be slaves. His point of view has been adopted by Milenko Poličević and Milan Vlajinac.¹¹¹

The argumentation of authors who think that *otroci* were a kind of slaves was based upon the following sources:

- 1) *Otroci* were part of the private and hereditary estate of their lords, as is clearly confirmed at the beginning of article 44 of Dušan's Code: "And such slaves¹¹² as a lord has, they shall be part of his estate and to his heirs for ever" (И отроке ци имаю властеле, да им' ёу бащинъ, и ных д'вце ѿу бащинъ вѣч'нъ). Slaves (*otroci*) could also be the property of the Church, monarch and maybe the towns, as well as of lords. As article 46 of the Code says: "And whoever has slaves, let him have them as an inheritance" (И отроке ци си кто имаю да их имаю ѿу бащинъ).¹¹³ Tsar Dušan's charter confirming the privileges of the lesser lord Ivanka Probištitović (1350) says that Ivanka and his children will have everything that he bought and all *otroci* in eternal hereditary estate (Този мъвсе мало големо записъе царьство ми ѿу бащинъ више писано... такожде записъе царьство ми Иванко и неговъ д'вци до вѣка непоколѣбимо нисимъ ... и съ крепеницами и съ отроки да си има и държи Иванко и негова д'вца до вѣка).¹¹⁴ On 10 April 1357, Tsar Uroš gave to the Kotor nobles Bivoličić and Bucić the island of Mljet (today in Croatia) as a hereditary estate and in "otrok's name" (да имъ юсть

¹¹⁰ Novaković, *Zakonik*, p. 176; Jireček, *Istorija Srba*, vol. II, p. 102; Taranovski, *Istorija*, vol. I, pp. 76–82; A. Solovjev, "Sokalnici i otroci u uporedno-istoriskoj svetlosti" ["Sokalnicks and Otroks in Comparative Historical Light"], *Glasnik SND* 19 (1938), pp. 103–132; Solovjev, *Zakonik cara Stefana Dušana*, pp. 210–211; Radojčić, *Zakonik*, who translates the word *otrok* always with *rob* (slave), pp. 51, 52, 56, 57, 100, 101, 108, 110, 118; D. Janković, *Istorija države i prava feudalne Srbije*, pp. 38–40.

¹¹¹ N. Krstić, "Razmatranija o Dušanovom zakoniku" ["Considerations on Dušan's Law Code"], *Glasnik DSS* 6 (1854), p. 143; M. Poličević, "Ustrojstvo pravosuda u staroj srpskoj državi u XIII i XIV veku" ("Organization of Justice in Old Serbian State in 13th and 14th Century"), *APDN* XXIII (1923), p. 202; Wlainatz, *Die agrarrechtlichen Verhältnisse des mittelalterlichen Serbiens*, pp. 280–281.

¹¹² Malcom Burr translated the word *otrok* always with *slave*.

¹¹³ Burr, "The Code of Stephan Dušan", p. 207; Novaković, *Zakonik*, pp. 39 and 41; *Zakonik cara Stefana Dušana*, vol. III, p. 110 (edition of Serbian Academy for Science and Art).

¹¹⁴ Edited by V. Aleksić, *SSA* 8 (2009), p. 73.

ѹ баципѹ ѹ штrocчко им€).¹¹⁵ The possesing of an *otrok* was not worthy of those who had taken the monastic oath, as the typikon of the monastery of Hilandar and monastery Studenica, prescribes (Отрокъ недостоинно имѣти вамъ).¹¹⁶

- 2) According to article 103 of the Code “in the case of the slaves, they shall be tried before their own lords for all their affairs” (Аще соѹ отроци да се соѹде прѣд своими господарїи, како любѣ за свое дльговѣ), and they could not demand justice from the Tsar (article 72): “And if any person come to the Tsar’s Court, let justice be done, to each, save only to the slave of a lord” (И кто невольни донде на дворѣ царевъ, да се въсакомѹ очини правда, всеѣнь отрока властеѡскога). The second part of the article 103 states: “but for crimes they shall go before the judges, that is for bloodshed, murder, theft, brigandage and harbouring men” (а за царевѣ да гредѹть прѣд соѹдїє, за крьвь, за враждѹ, за тати, за гоуварѣ, за прѣемь людьскыи).¹¹⁷
- 3) Article 46 (second part) of the Code runs as follows: “And only the lord himself, or his wife, or his son, may free them [*otroci*, slaves] and none other” (Тъкмо џо кје властѣлии простити, а или мѹ жена, а или сынъ тозии да ћесть свободно, а ино ницио).¹¹⁸

Discussing all those facts Teodor Taranovski wrote that a man who was the object of property of another man could be considered only as a slave: so, *otroci* were slaves.¹¹⁹ However, other information given by the legal documents warn us that the legal status of *otroci* was not always like a slave’s. Article 21 strictly forbids the selling of a “Christian”¹²⁰ into another faith: “And whoever shall sell a Christian into another-and-false-faith, let his hands be cut off and his tongue cut out” (И кто продад христіанина оу ино нєвѣр’ю вѣрѹ, да мѹ се рука всече и єзыкъ оуреже).¹²¹ This means that if an *otrok* were Christian Orthodox, he could not be sold to a Roman Catholic.

¹¹⁵ Edited by R. Mihaljčić, “Mljetske isprave cara Uroša” (“Mljet’s Documents of Tsar Uroš”), *SSA* 3 (2004), p. 74.

¹¹⁶ Čorović, *Spisi Svetog Save*, p. 111.

¹¹⁷ Burr, “The Code of Stephan Dušan”, pp. 212 and 516; Novaković, *Zakonik*, pp. 58 and 79; *Zakonik cara Stefana Dušana*, vol. III, pp. 118 and 126 (edition of Serbian Academy for Science and Art).

¹¹⁸ Burr, “The Code of Stephan Dušan”, p. 207; Novaković, *Zakonik*, p. 41; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

¹¹⁹ Taranovski, *Istorija*, vol. I, p. 77.

¹²⁰ The word “Christian” in the Code is always used in the sense of a member of the Greek Orthodox Church.

¹²¹ Burr, “The Code of Stephan Dušan”, p. 202; Novaković, *Zakonik*, p. 24; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

The second part of article 44 orders: "Only a slave may not be given as a marriage portion" (奴ъ отрокъ оу прикыне да се не дае никъда).¹²² Trying to explain this strange decree Alexander Solovjev pointed to the old Roman and Byzantine custom, that existed in Dubrovnik and Kotor, that only female slaves (*ancilae*) could be given as a marriage portion. According to the author's interpretation, article 44 forbids only giving as a marriage portion of a male *otrok*, wishing to stop the reduction of manpower on manors.¹²³ Nikola Radojčić finds that the prohibition of giving an *otrok* as a marriage portion was a high level of personal rights. It was a guarantee that an *otrok* would stay in the place where he was born; otherwise his social position could become even worse.¹²⁴ However, as Lujo Margetić noticed, this decree could be very easily tricked: the *otrok*'s master could give as a present the male *otroks* to his daughter or to his son-in-law. Or he could "sell" the *otroks* at a very low price to his son-in-law.¹²⁵

It is to be noted that although there was a distinct difference between the *otroci* and *meropsi* (villagers, serfs) when the two classes lived together in one village, attention was not paid to the difference in personal rights between them. It clearly says in article 67 of the Code: "Slaves and villagers who dwell together in one village shall all pay together any payment which comes due: such payment men make and work that they do, so much land let them have" (Отроки и меропи кои съде заледно Ѹ единомъ сълѣ, въсака плаќта која приходи, да плаќта въси заледно; на людїи како платъ плаќта, и работоту работато, такози и землю да дръже).¹²⁶ Reading the text of the article 67 we can conclude that some *otroci* had their own lands. Information given by charters confirms such

¹²² Burr, "The Code of Stephan Dušan", p. 207; Novaković, *Zakonik*, p. 39; *Zakonik cara Stefana Dušana*, vol. III, p. 110. For a marriage portion (dowry) the Code uses the Greek word *prikija*, coming from προίξ, προίχα. In modern Serbian we use the Arab word *miraz* (Arab *mîrât*, Turkish *miras*), which came into Serbia during the Turkish occupation. See A. Škaljić, *Turcizmi u srpskohrvatskom-hrvatskosrpskom jeziku* [Words of Turkish Origin in the Serbo-Croatian Language] (Sarajevo 1985), p. 464. Cf. S. Šarkić, "Provisions of Roman Law on Dowry in Serbian Mediaeval Law", *ZS-SR 125 Band, romanistische Abteilung* (2008), pp. 682–687.

¹²³ A. Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 131–132, and *Zakonik cara Stefana Dušana*, p. 21. In littoral cities a female slave (*ancilla*) was given as a marriage portion to every rich woman. Especially high was the price of a wet nurse (*ancilla, babica, baiula*). See Jireček, *Istorija Srba*, vol. I, p. 102, and "Das Gesetzbuch des serbischen Caren Stephan Dušan", p. 159.

¹²⁴ N. Radojčić, "Oko Dušanova Zakonika" ["On Dušan's Law Code"], *IČ 5 (1954–1955)*, p. 11. Margetić, "Bilješke o meropsim, sokalnicima i otrocima", p. 111.

¹²⁵ Margetić, "Bilješke o meropsim, sokalnicima i otrocima", p. 111.

¹²⁶ Burr, "The Code of Stephan Dušan", p. 211; Novaković, *Zakonik*, p. 55; *Zakonik cara Stefana Dušana*, vol. III, p. 116. Novaković, *Zakonik*, p. 187, considers that this identity of procedure could occur only when the villager (*meropah*) had no *baština* (hereditary estate), and for

conclusion. On the Saint Stephen's monastery manor everyone had to treat the vineyard “and priest, and pupil, and *otrok*, and every handcraftsman as well as the other workers; who does not dig it [vineyard] until the Easter, let an ox be taken from him” (А виноград веќась да копад: и попъ и дијаќсъ, и штроксъ, и всаки максторије тако и пречни работници; к’то ли га не оукопада до Въскръсенија да моч се волъ оупаде).¹²⁷ It is obvious that on Saint Stephen’s manor *otroci* possessed some lands, because the fine is equal for all the abovementioned classes. The Dečani charter says that some *otroci* had a duty to follow their masters on the road: “*Otroci* who go on the road with a monastery superior or some of monks, doing some Church business, let they not feed from their houses, but with a Church flour” (штрокци кои с игоум’номъ на поуть гредоу, а или с коимъ калоугеромъ по црковној работе да се јад, којки се храни нъ црков’нимъ брашномъ).¹²⁸ King Dušan’s charter to the monastery of Hilandar (c.1336–1340) contains the chapter “The Law of Suburbs” (законъ подградијо). According to this “law” the *otroci* from the city of Štip (in North Macedonia) area, who had horses and were able to exercise knight’s services, were exempt from regular labourers’ duties. Their horses would not carry cargo. Those who had no horses had to plough one day in autumn and one day in spring and to dig the vineyard one day (И тръгъ ципски и законъ подградијо кои соу штрокци съ коими, да имъ јесть законъ: къги походи икономъ кралю или на котороу годѣ работеу, а ѕни с нимъ на конехъ. А да имъ кои не оузимају, ни под, товдъ да се не подлагаютъ, нъ сами с ними да походеѓть на кои годѣ посоль црквни. А кои соу бес конеи, да ѡроутъ дънъ јесеније и дънъ пролетније, и да го пожноуетъ и извръхоутъ, и дънъ ѕ виноградѣ да работаютъ).¹²⁹ King Dušan’s charter from about 1331 to the Hilandar’s fortification tower (*pirg*, from Greek πύργος) mentions ten *otroci* who began a monastery’s service by their own will (И се отроци, кои соу полюбили црквь).¹³⁰ It is obvious that those *otroci* could not be slaves.

Beside the escort of their masters, *otroci* got some other confidential duties. Giving privileges to the monastery of Saint Nicolas in Vranjina (1233), Arch-

that reason the difference in rights became merely nominal, since a *meropah* without a free holding was in no better position than an *otrok*, to all intents and purposes.

¹²⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 464.

¹²⁸ Edited by Ivić and Grković, *Dečanske hrisovulje*, pp. 133–134.

¹²⁹ Edited by A. Fostikov, “Zbirna povelja kraljeva Milutina i Stefana Dušana Hilandaru” [“Collective Charter of Kings Milutin and Stefan Dušan to Hilandar Monastery”], *SSA* 13 (2014), p. 93. S. Ćirković, “Hreljin poklon Hilandaru” [“Hrelja’s Gift to Hilandar”], *ZRVI* 21 (1982), p. 104, n. 3, thinks that the word *otrok* was used here in a general sense, meaning the whole city population, either those who had noblemen’s privileges or those who had to exercise the feudal services.

¹³⁰ Novaković, *Zakonski spomenici*, p. 486, para. IV.

bishop Sabba ordered that the monastery's people (villagers) are not under the power either of the great lords or the Archbishop or his *otrok*, nor of anyone, great or small (И кое чловѣкѣ тѹди посаде на томъ мѣстѣ, које мѹ съмъ дѣль, да не има надъ ними вѣласть ни вѣломожа, ни архиепискѹпь ни югѡвъ штрокъ, ни ипъ къто ни малъ ни великъ).¹³¹ In this case, the *otrok* was the executor of the Serbian Archbishop's authority. A part of the *otroci* had a very important role in judiciary system. Saint George's charter forbids all of the King's dignitaries (the list mentioned in the text is very long) from putting on trial the monastery villagers and appointing an *otrok* (чловѣку Светаго Георгија да не соуди никон владоуци по др҃жавах' краљевства ми, ни да даје штрокса на ипъ). In the same charter, a little bit further on, we can read that only the hegoumenos (*iguman*) and his *otrok* can judge the monastery serfs (И кто се наре комоу љрињ чловѣкъ Светаго Георгија да се при прѣдъ игоуменомъ и съ игоумновѣмъ штрокомъ).¹³² On 12 January 1454 Despot Đurad Branković ordered his vassal, lord Oliver Golemović, to define the boundaries of the estates of the monastery of Hilandar. Oliver Golemović appointed a jury and sent them the *otrok* Nikola Vladović (и посла ни отрокома Николоу Владовиціа).¹³³ However, the text of the document does not allow any conclusion as to what was the importance in that case of *otrok* Nikola Vladović. Fortunately, from the same year (1454) we have another document disputing the boundaries between the estates of the monasteries Hilandar and Saint Archangels. One more time Oliver Golemović appointed a jury, but for this trial he sent instead of himself the *otrok* Radosav Đurašinović (с отрокома кога беше послал Оливеръ Големовик место севе, Радосава Гюрашиновиціа). Radosav Đurašinović took the oath (И томоуи би отрок кој ни заклина, вишеписани Радосавъ Гюрашиновик)¹³⁴ of 24 jurors (*starinici*) in the presence of priors and other dignitaries of two famous monasteries. It is perfectly clear that in this case the act of the oath was committed to an *otrok*.

The term *otrok* can also be found in documents of Serbian monarchs written in Greek. Despot John Uglješa, in the charter solving the dispute on the land between the monastery of Zographou (on Holy Mountain) and the bishop of Hierissos (February 1369), says that he sent his Greek courtier (*οίκεῖς*) Niketas Pediasimos (Νικήτας Πεδιάσιμος) as *otrok* (ώς ὄτρόκου) to deliver land to

¹³¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 127.

¹³² Ibid., p. 326.

¹³³ Solovjev, *Odabrani spomenici*, p. 214.

¹³⁴ Ibid., pp. 215–216. It is interesting that both documents start with the terms "we, the slaves and subjects (*rabi i poslušnici*) of our lord Despot". So, the document uses at the same time the terms *rab* and *otrok*, but it seems that neither of them means slave in the classical sense. *Rab* means here servant, and *otrok* is a judiciary executor.

the monastery's community. As an *otrok* Niketas Pediasimos was not a simple executor of a verdict: as the Despot's man of confidence he was sent to Thessaloniki to examine the witnesses, and it was according to his report that the sentence was pronounced.¹³⁵ Obviously, Niketas Pediasimos was not a slave, but rather a Byzantine noble who excercising the duty of an *otrok*.¹³⁶

Considering all the details given by the legal sources, it is evident that the *otroci* could not be simply called slaves, and that the term had few different meanings.¹³⁷ Basically, the *otroci* occupied the lowest rung on the social ladder; they were a class of people with a social status between serfs and slaves. However, the close relationship between an *otrok* and his master might create a relation of confidence, so that some very important missions could be committed to an *otrok*.¹³⁸

5 Dependent Craftsmen and So-called *Sokalnici* (сокалници)

5.1 Dependent Craftsmen (maistorie, маисторије)

King Milutin's charter to the monastery of Saint Stephen in Banjska and the charter of his son, King Stefan Uroš Dečanski, to the monastery of Dečani, mention blacksmiths, woodworkers, tailors, tanners, potters, saddlers, masons and goldsmiths. All these craftsmen (маисторије) had the same duties as the *sokalnici*, a class of the population whose legal status is not clear. The equal duties are evident from the text of the Dečani charter: "all craftsmen have to work like the

¹³⁵ Solovjev and Mošin, *Diplomata graeca*, pp. 276, 278.

¹³⁶ A. Solovjev, "Sudije i sud po gradovima Dušanove države" ["Judges and Courts in Towns of Dušan's State"], *Glasnik SND* 7–8 (1929–1930), p. 160, finds that the respectable Niketas Pediasimos in that case exercises a modest duty of presence, that usually does not belong to him. Solovjev's opinion cannot be accepted, because, as G. Ostrogorski, *Serska oblast posle Dušanove smrti* [Region of Serres after Dušan's Death] (Belgrade 1965), p. 22, pointed out, the abovementioned land was two years later delivered to the monastery by the "geneal judge" (χριτής καθολυχός) himself, on the order of Despot Uglješa.

¹³⁷ See R. Mihaljić, "Otroci", *IG* 1 (1986), pp. 51–57 = *Prošlost i narodno sećanje* (Belgrade 1995), pp. 233–240. See also D. Bubalo, "Otrok" and "Rob, Robinja", in *LSSV*, pp. 483–485 and 622–625. Cf. S. Šarkić, "Pravni položaj Vlaha i otroka u srednjovekovnoj Srbiji" ["Legal Position of Dependent Shepherds and Slaves in Mediaeval Serbia"], *ZRPFNS XLIV/3* (2010), pp. 37–51.

¹³⁸ It is well known that in Ancient Rome very important duties were conferred to the slaves and especially to the freemade (*libertinus*) ones. Margetić, "Bilješke o meropsima, sokalnicima i otrocima", p. 113, considers that the *otroci* were a social class similar to noblemen servants in mediaeval Croatia or the *ministeriales* of German law.

sokalnici" (и в'си маисторије да работатоја тако и сокал'ници).¹³⁹ In the next chapter, the Dečani charter adds: "And the hay has to be mown the same way by the villagers, *sokalnici* and all craftsmen as well" (А съено да косе тако и мероп'си тако и сокал'ници тако и в'си маисторије).¹⁴⁰ The sources show us that in the mediaeval Serbia there existed different kinds of craftsmen and artisans. They were not a free class, but were rather a dependent population, close to villagers (*meropsi*). Beside their craft's duties, they were obliged to exercise different services, but their obligations were lesser. On the Dečani manor, for example, they had to plough one *mat* of wheat, one *mat* of millet, and one *mat* of oats, and cut one *mat* of vineyard.¹⁴¹

It seems that until the middle of the 14th century there was no excess need for craftsmen, because Saint Stephen's charter orders: "Any craftsman, living in any village, who has a lot of sons, let one of them stay on his father's place, but the others have to work as the villagers" (Оу којемъ любо сел'в кои любо маисторъ, ако име имати м'ного сыновъвъ, јединъ вт нихъ на втъчине мѣстѣ да встаде, а ипин да соу работнци).¹⁴² So, only one of a craftsman's sons could exercise his father's job, whilst the others became villagers (*rabotnici*). That fact confirms that the agricultural labourers were much more needed. However, the situation changed in the second half of the 14th century, because the sources mention the handicrafts' villages working for the needs of the Court and noblemen. Tsar Uroš's charter to the headman (*čelnik*) Musa (15 July 1363) mentions 13 villages doing different craft jobs: two villages of grooms, two of hunters, two of field-train soldiers, two of cooks, one of goldsmiths, and four villages which wove the linen for Tsar's Court.¹⁴³ As Stojan Novaković pointed out, the memory of those artisan's villages survived in his times as toponyms, and certain names have survived to the present day, such as Kolari (wagon-makers), Sedlari (saddlers), Kovači (blacksmiths), Zlatari (goldsmiths), Štitari (shield-makers), Lončari (potters), Grnčari (potters), Kamenari (stone-carvers), Kožuari (tanners), among many others.¹⁴⁴

¹³⁹ Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 133. Saint Stephen's charter has a similar order: "all of them [craftsmen] have to plough like the *sokalnici*" (вси да врю и косе како и сокал'ници). Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

¹⁴⁰ Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 133.

¹⁴¹ Ibid., p. 133.

¹⁴² Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

¹⁴³ Edited by M. Šuica, *SSA* 2 (2003), pp. 144–145. See also A. Solovjev, "Jedna srpska župa za vreme carstva".

¹⁴⁴ Novaković, *Selo*, pp. 88–130.

5.2 Sokalnici (*сокалници*)

Beside dependent craftsmen, five Serbian charters and Dušan's Law Code mention *sokalnici*, a class of people whose legal status has been the object of many discussions and hypotheses. An examination of legal documents shows that the feudal duties of so-called *sokalnici* were similar to those of villagers, but quantitatively lesser. King Vladislav's charter to the monastery Holy Virgin Bistrička (1234) orders that a *sokalnik* has to plough half as much as a *meropah* (villager), but he has to mow the hay and give the *obrok* (food and lodging for King's dignitaries) like a *meropah* (Сокалњник да ѡре поље дроуѓе м'ти влаке ралик; съно да коси с м'бропхом једнако ... и къги приходи кралъ или властелинъ или гость, да приплака оу ѡброкъ како и м'бропахъ).¹⁴⁵ Similar decrees are contained in the Saint Stephen's and Dečani chrysobulls.¹⁴⁶ That a *sokalnik* was on a higher rung of the social ladder than a *meropah* (villager) is clearly stated by Saint George's charter: a son of a parish priest, who does not learn to read, will be not be a *meropah*, but a *sokalnik* (И поповци сынове кои книгу не изоучује да сој сокалници а да се не померопише).¹⁴⁷ Some legal documents tell us that the *sokalnici* had to give escort to monastery dignitaries. King Vladislav's charter to the monastery Holy Virgin Bistrička says that a *sokalnik* has to go on the road, riding his horse, as the superior says (поуть да т'бра с коне мъ колико вели стартви).¹⁴⁸ According to the Saint Stephen's chrysobull, a son of a *sokalnik*, when he got married and if he was trustworthy, obtained a horse from the monastery (А сокал'ници ... къди на женитвоу понде, ако боуде достоинъ, игоуменъ з'говоривъ се съ братијами да моу даде конъ). With their horses *sokalnici* had to carry annually a cargo of corn and a cargo of wine from every place as the superior says (Сокал'ници да доносе оу годици товадъ жига и товадъ вина шт коудъ имъ рече игоуменъ). When they travel together with a superior and the monks, doing some Church business, they will be fed with Church flour, but when they travel alone, they will use their own (Сокал'никъ къда съ игоуменъ или с калогеромъ камо греде на цркв'ны посыль, да се цркв'ны хрании, а къди самъ греде свое брашно да носии). However, the *sokalnici* had to help in the sowing of the Church's and the King's crops (Сокал'ници да помогаю шити цркве и трапезе и кралевѣхъ полатъ).¹⁴⁹ Finally, article 107 of Dušan's Code mentions the *sokalnik* as the personal staff of the judge: "Whoever shall beat

¹⁴⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

¹⁴⁶ Ibid., p. 464; Ivić and Grković, *Dečanske hrisovulje*, p. 133.

¹⁴⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 328.

¹⁴⁸ Ibid., p. 167.

¹⁴⁹ Ibid., pp. 464, 456.

a *sokalnik* or officer of a judge shall be imprisoned and all that he hath will be taken from him" (Кто се наайде оубывъ соудина сокал'ника или пристава, да се плаќни и да моч се възмѣ џо има).¹⁵⁰

Regarding who exactly the *sokalnici* were, there is no general agreement among scholars. Đuro Daničić in his *Dictionary from Serbian Literary Antiquities* wrote that a *sokalnik* was a tenant who had to pay the tribute called *soć* (*columus qui tributum coh̄ dictum pendere tenebatur, срл. socamannus*). This viewpoint was accepted by several authors and can be found in some dictionaries.¹⁵¹ According to the interpretation of Stojan Novaković the origin of the word *sokalnik* comes from *sokalnica* = kitchen, and in that meaning the word can be found in the Serbian translation of Matheas Blastares' *Syntagma*. So, a *sokalnik* was a cook or a baker, or maybe the mason used for the building of a hearth.¹⁵² Borislav Radojković finds that *sokalnici* were lesser officers whose duty was to collect corn income (*soće*), to transport it to the storehouse (*soknica, сокница*) and to manage the handling of it alongside the *soknica*.¹⁵³ According to the very precise philological analysis of Alexander Sоловьев the word *sokalnik* is in close relation with the expressions *sokalnica* and *sokal*, but not with the terms *sok* and *soće*. He pointed out that the Serbian translator of Matheas Blastares' *Syntagma* used the word *sokalnica* (сокальница) to translate the Greek word ἐστία

¹⁵⁰ Burr, "The Code of Stephan Dušan", p. 517; Novaković, *Zakonik*, p. 82; *Zakonik cara Stefana Dušana*, vol. III, p. 128 (edition of Serbian Academy for Science and Art).

¹⁵¹ Đ. Daničić, *Rječnik iz književnih starina srpskih* [Dictionary from Serbian Literary Antiquities], vol. III (Belgrade 1864), p. 134; F. Miklosich, *Lexicon palaeoslovenico-graeaco-latinum* (Vindobonae 1865), p. 868; B. Petranović, "O ropstvu po srpskim spomenicima i štatutima primorskih dalmatinskih gradova" ["On Slavery according to the Serbian Sources and Statutes of Littoral Dalmatian Cities"], *Rad* 16 (1874), pp. 62–63; *Rječnik Jugoslavenske Akademije Znanosti i Umjetnosti* [Dictionary of the Yugoslav Academy for Science and Art], vol. XV (Zagreb 1956), p. 887; Skok, *Etimologiski rječnik*, vol. III, p. 302.

¹⁵² Novaković, *Zakonik*, p. 211 and "Soće i Sokalnik u srednjovekovnoj Srbiji" ["Soće and Sokalnik in Mediaeval Serbia"], *Godišnjica Nikole Čipića* 26 (1907), pp. 118–128. The majority of scholars think that *sokalnici* were cooks, bakers, and craftsmen in general, with some additional feudal duties. See Mažuranić, *Prinosi*, p. 1346; J. Gerasimović, *Staro srpsko pravo* [The Old Serbian Law] (Belgrade 1925), p. 88; Taranovski, *Istorija*, vol. I, p. 57; M. Dinić, "Sokalnici", *PKJIF* 28 (1962), pp. 149–157; Mošin, *Spomenici na srednovekovnata i ponovovata istorija na Makedonija*, vol. I, pp. 235–236.

¹⁵³ B. Radojković, *O sokalnicima* [On Sokalnici] (Belgrade 1937); *Još nekoliko reči o sokalnicima* [A Few More Words on Sokalnici] (Belgrade 1941), and *Nova tumačenja nekih članova Zakonika Stefana Dušana, Pronjari i sokalnici* [New Interpretations of Some Articles of Stefan Dušan's Law Code, Fief Holders and Sokalnici] (Belgrade 1965). Similar points of view are held by Polićević, "Ustrojstvo pravosuđa u staroj srpskoj državi", p. 273; Dolenc, *Dušanov Zakonik*, pp. 74, 83; and R. Grujić, "Vlastelinstvo Svetoga Đorda kod Skoplja", pp. 67–68.

= hearth, fireplace. *Sokalnici* were ex-slaves, freemade people, but in Dušan's time the difference between villagers (*meropsi*), *otroci* and *sokalnici* was slowly disappearing.¹⁵⁴ Dragoslav Janković thought that *sokalnici* were ex-slaves, who had been transferred into noblemen's dependent servants, whose first duty was cooking, but also the transport of goods and repairing of buildings.¹⁵⁵ According to the latest interpretation of Lujo Margetić, the *sokalnici* were villagers who had some "more elegant and more honourable" duties, connected with the possession of horses. And for this reason they were completely or partially exempt from some services. Margetić finds that the legal status of the *sokalnici* reminds us of the so-called *arimani* from the district of Istrian town Poreč, and of the *knapi*, very well known in the cities of Bakar, Bribir and Novi in Vinodol County (today in Croatia).¹⁵⁶

6 Parish Priests (*seoski popovi*, попови)

6.1 Division and Social Status

Lesser parish priests, living in villages, were a relatively numerous and heterogeneous class that in entirety did not belong to the commoners. However, the legal status of the majority of parish priests was close or identical to the commoners' and that is the reason why we are speaking of them in this chapter.¹⁵⁷

Dušan's Law Code makes clear the difference between three groups of parish priests: 1) priests with patrimonial lands (*popovi baštinici*); 2) priests who got from their masters three fields, and 3) priests who got from their masters more than three fields.

The social status of priests with patrimonial lands (*popovi baštinici*) was defined by article 31 of the Code, starting as follows: "And priests who own

¹⁵⁴ Solovjev, "Sokalnici i otroci", pp. 103–132. Trying to reject Solovjev's etymology Margetić, "Bilješke", p. 104, pointed out that the Greek word ἐστία was translated in *Nomokanon* of Saint Sabba as *povarnica* (поварница). Dinić, "Sokalnici", n. 44 suggested that the duties of *sokalnici* should not be connected with the etymology of the word, but Radojković opposed that point of view. According to him the problem of *sokalnici* cannot be solved without a correct interpretation of the origin of the expression ("Nova tumačenja", p. 37).

¹⁵⁵ Janković, *Istorija*, pp. 36–37.

¹⁵⁶ Margetić, "Bilješke", pp. 102–108; Cf. L. Margetić, "Knapi Frankapanskih (i zrinskih) primorskih posjeda" ["Knapi from Frankapan's and Zrinski's Littoral Estates"], *Starine* 58 (1980), pp. 177–191.

¹⁵⁷ On lesser priests, see V. Marković, *Pravoslavno monaštvo i manastiri u srednjovekovnoj Srbiji* [Orthodox Monasticism and Monasteries in Mediaeval Serbia] (Sremski Karlovci 1920); R. Grujić, *Srednjovekovno srpsko parohijsko sveštenstvo* [Mediaeval Serbian Parish Priests] (Skoplje 1923); Grujić, "Lična vlastelinstva srpskih crkvenih predstavnika".

land shall have their patrimonial land and also be free" (И поповѣ баџини да си имаю својо земљу баџину и да съ својодни).¹⁵⁸ From this article it is clear that the priests were allowed to posses land and did not forfeit their inheritance on entering the Church. Their property right was so called *baština* (hereditary estate). Charters, promulgated before Dušan's Code, mention priests who were even owners of villages. Saint Stephen's chrysobull, for example, speaks of priest Tzerovatz, the owner of the village Vojtešina with a church (Село Войтешина попа Церов'ца, съ црквио и съ своими меглами); priest Bratko possesed the village Podrima; and priest Srđ was the owner of a village on the River Ibar, in Central Serbia (Село оу подрими попа Брат'ка; Село оу Ибруу попа Срѓа).¹⁵⁹

The legal status of the other two groups of parish priests was regulated by the second part of article 31. It says: "and those priests who have no patrimonial land, to them shall be given three fields according to the law: and the priest's cap is free; and if he take more, he shall do work for the churches upon that land according to the law" (а ииї поповѣ кои не имаю баџтине, да им' се даде три нивѣ законитѣ, и да есть попов'ска капа свободна. ако ли веки оузме ѿт тези земли, да работи црквама тѣ по закону).¹⁶⁰ In the event a priest had no land, a ration of three fields, presumably the quantity considered necessary for one's needs, would be given to him. These priests were exempt from feudal services, but not from tributes. However, some priests who had big families, and therefore had taken more than three fields from their lords, had to exercise feudal duties according to the law on that excess land. These two groups of priests could not leave the manors of their lords, as is clearly stated in the article 65 of Dušan's Code, which makes an exception:

If a priest has no land,¹⁶¹ let three lawful fields be given to him. And no priest whosoever shall depart from his lord. And if his lord do not feed him according to the law, let him come to his archpriest and the archpriest shall tell the lord to feed the priest according to the law; and if the lord hearken not to him, then is the priest free to go where he will. If the priest own hereditary land, the lord has no power to drive him out, but he is free.

¹⁵⁸ Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

¹⁵⁹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 463–464.

¹⁶⁰ Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

¹⁶¹ *Stas*, from Greek στάσις, lit. "standing".

Попъ кои не има свога стаса, да мѹ се даде, г̄, ние въ законите. и попъ кои є годѣш въ свога господара, да не греде никамо. ако ли га господарь не име хранити по закону да доиде къ своемѹ архієрею и архієреи да рече шномѹзи властелину да храни попа по законѣ, да ако шнѹзи господарь не име чути, да єсть попъ свободань коудѣш мѹ годѣш. ако ли боудѣш попъ баципънъкъ, да га нѣсть вол’ни штгнати, тък’мо да є свобод’ни.¹⁶²

Usually, parish priests were exempt from some feudal services that commoners normally had. Saint Stephen's chrysobull, for example, orders that hay has to be mown by villagers (*meropsi*), *sokalnici* and craftsmen (*maistorie*), “all equally ... except the priest” (в’си кед’нако... развѣ попа). The same charter exempts the priests from so-called bee-tribute, i.e. a quantity of honey (Трън’ка пета прѣз лѣто развѣ попа всакому да се оужимаа).¹⁶³ The Gračanitza charter says that parish priests were not obliged to hunt rabbits (и да лове. Г. дѣни ӡдѣце ӡаманицомъ, развѣ поповъ).¹⁶⁴ Parish priests also got from the villagers a special revenue called *bir duhovni* (spiritual tithe). According to the text of Saint Archangels' chrysobull, the tribute consisted of a tithe of grain or two dinars (и да даю виръ доуховноу наѡдрицомъ, лоукно жита вола два динара).¹⁶⁵ The Church took half of the spiritual tithe (*bir duhovni*) and the parish priests kept the second half, says the Žiča chrysobull (ұтю доходи вътъ поповъ, половина да се ծзима сиен цркви).¹⁶⁶

Parish priests had to pay special taxes for their nomination to the higher clergy (bishops and archbishops). According to the *Syntagma* of Matheas Blastares those taxes called *kanonik* (каноникъ) or *vrhovina* (връховина), made on 30 villagers' houses one gold coin and two silver coins, one ram, six *kabao* (one *kabao* = 16 kg) of barley, six cups (*mera*) of vine, six pints of flour and thirty hens. Besides that, the parish priests had to give, three times a year, presents to their bishops “according to the law”.¹⁶⁷

It seems that the number of parish priests was relatively high. On Dečani manor, for example, in the village of Grmočelo there were 8 priests for 90 houses; in the village of Krastavljani 4 priests lived where there were 50 houses. According to the estimation of Stojan Novaković, on the entire manor there

¹⁶² Burr, “The Code of Stephan Dušan”, pp. 210–211; Novaković, *Zakonik*, p. 53; *Zakonik cara Stefana Dušana*, vol. III, p. 116.

¹⁶³ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 464, 465.

¹⁶⁴ Ibid., p. 503.

¹⁶⁵ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 111.

¹⁶⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 92.

¹⁶⁷ Novaković, *Syntagma*, p. 543.

lived one priest for every 20 houses.¹⁶⁸ That was the reason why some charters tried to limit the number of parish priests. As has already been noted, Saint George's charter orders that the son of a parish prist who has not learned to read becomes a *sokalnik*. However, according to the Dečani charter, a son of a villager could not become a priest, even if he learned to read and write (а да се попът попа стави а м'броп'шикъ ако книгоу избоячи да је м'бропъхъ).¹⁶⁹

¹⁶⁸ Novaković, *Selo*, p. 172.

¹⁶⁹ Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 134. Cf. S. Šarkić, "Maistorije, sokalnici i seoski popovi" ["Craftsmen, So-called *Sokalnici* and Parish Priests"], *ZRPFNS* XLV/1 (2011), pp. 59–67.

Townsmen (*Gradani*, Граѓани, Граждани)

1 Name and Division

The urban population in mediaeval Serbia was a legally and actually heterogeneous class. Their name—*gradani* (граѓани or грађани = townsmen)¹ comes from the Serbian word *grad* (градъ), meaning town, city. A *grad* (town) was originally a fortified place where the population could find a shelter.² Later, people began settling around fortresses, becoming traders and artisans. Such settlements, “under the town”, were called *podgradije* (подградије), *suburbium*, or sometimes *amborija* (амборија).

The expression *podgradije* (Serbian *pod* = under and *grad* = town, city)³ could be found in King Dušan’s charter (between 1336 and 1342) to the monastery of Hilandar. The King says that he gave 10 villagers (*meropsi*) to the church dedicated to the Archangel Michael in the suburb of Štip⁴ (И прида кралевство ми цркви архистратигу ѿт подградија чтипскаго .н. люди). The next chapter of the same charter has a title “The Law of Suburbs” (законъ подградијю), where the duties of villagers, living in the suburbs, were specified.⁵ Suburbs (*podgradije*) in the original meaning of the word were very common in Bosnia. Their names were derived from the names of the towns: Podborač (lit. under Borač), Podsoko (under Soko), Podprozor (under Prozor), Podblagaj (under Blagaj), Podkonjic (under Konjic), Podzvornik (under Zvornik), etc.⁶

The Latin term *suburbium* comes from *sub* = under and *urbs* = town, city. In Ragusan documents a suburb (*podgradije*) is designated by the Latin term *sub* or Italian *sotto* (under). For example *Podvisochi-Subvisochi-Sottovisochi*, meaning “under the royal town of Visoki” or *Subtusborach-Sotoborach*, “under Borač”, the main fortress of the mighty nobleman family Pavlović.⁷

¹ On townsmen in mediaeval Serbia see S. Ćirković, “Gradići”, in *LSSV*, pp. 126–127 and S. Šarkić, “Gradsko stanovništvo u srednjovekovnoj Srbiji” [“Townsmen in Mediaeval Serbia”], *ZRPFNS* XLV/2 (2011), pp. 17–27.

² See the article Lj. Maksimović, “Grad”, in *LSSV*, pp. 122–124, with a list of references.

³ In modern Serbian we use the word *podgrađe*, not *podgradije*.

⁴ Štip (Serbian Cyrillic Штип), ancient Astibo, today a town in ex-Yugoslav Macedonia (North Macedonia).

⁵ Edited by A. Fostikov, *SSA* 13 (2014), pp. 92, 93.

⁶ See D. Kovačević-Kojić, “Podgrade”, in *LSSV*, pp. 534–535.

⁷ For more details see D. Kovačević-Kojić, *Gradska naselja srednjovjekovne Bosne* [Towns in Mediaeval Bosnia] (Sarajevo 1978).

The expression *amborija* comes from the Greek word ἐμπόριον = market-town. It can be found in King Dušan's chrysobull (6 May 1336) confirming the donations of nobleman Hrelja to the monastery of Hilandar in Štip, a place where 50 villagers' families lived („грађољу Шипој, оу амборијо стась парничких .н.).⁸

In documents from the 15th century, the word *varoš* (варош) was used, coming from Hungarian *vár* = fortress. The sources also make use of the expressions *gradac*, *gradina* and *gradište*, as a place within the confines of a fortress.⁹

Besides the towns, Serbian legal sources mention market-towns (*trgovi*, singular = *trg*, трг),¹⁰ unfortified settlements where goods were exchanged.¹¹ Towns and market-towns are mentioned side by side in several articles of Dušan's Law Code (articles 7, 141, 168, 169, 184), so we can suggest that they had identical legal status.

The urban population in its entirety did not represent a unique, autonomous class (*tiers état*) in mediaeval Serbia, unlike in the Occidental European monarchies. Trying to explain the legal status of Serbian cities and its population we can speak of three different types of towns: towns in the interior of Serbia; maritime towns; and towns conquered from Byzantium.¹²

2 Towns in the Interior of Serbia

In the towns in the interior of Serbia there lived a Serbian population and foreigners (on foreigners see next chapter). The Serbian population living in towns was equal in legal rights to commoners. That fact can be clearly seen from article 94 of Dušan's Code that mentions a "commoner, whether in a city,

⁸ Edited by V. Petrović, *SSA* 13 (2014), p. 13. Cf. Ćirković, "Hreljin poklon Hilandaru", pp. 103–117.

⁹ See M. Popović, "Gradac", "Gradina" and "Gradište", in *LSSV*, pp. 124–125.

¹⁰ In modern Serbian *trg* primarily means a square, but also market and market-place.

¹¹ See M. Živojinović, "Settlements with Marketplace Status", *ZRVI* 24–25 (1986), pp. 407–412, and D. Kovačević-Kojić, "Trg", in *LSSV*, pp. 737–739.

¹² The list of works on Serbian mediaeval towns and urban society published prior to 1976 can be found in S. Ćirković's preface to the book of M. Dinić, *Srpske zemlje u srednjem veku* [Serbian Land in the Middle Ages] (Belgrade 1978), p. 26, n. 71. See also S. Ćirković, "Unfulfilled Autonomy: Urban Society in Serbia and Bosnia", in *The Urban Society of Eastern Europe in Premodern Times*, ed. B. Krekić (Berkeley-Los Angeles-London 1987), pp. 158–184, and the miscellany from a scholarly meeting on the social structure of Serbian mediaeval towns under the title *Socijalna struktura srpskih gradskih naselja (XII–XVIII vek)* (Smederevo-Beograd 1992).

county or mountain district" (севра оу градъ или оу жѣгѣ или оу катоунъ).¹³ It was also very common for the monarch to give to the Church, as a present, estates in villages and in towns. In the charter presented to the monastery of Saint Archangels (Greek ἀρχάγγελος, "chief angel") in Lesnovo (1347–1350),¹⁴ Tsar Dušan says that he gave 20 houses from the city of Štip to the church as a hereditary estate (Оузє светое царство ми оу градоу .к. коукъ, и то приложи све-тое царство ми подъ црксовъ Светаго Архистратига Абеновскаго, да соу цркви съ всѣми бацнами своими цю си имаю оу градоу томъ).¹⁵ The towns belonged to one of the monarch, the Church, or a nobleman, so the city population all had commoners' feudal services, and this can clearly be seen from several decrees in Dušan's Code. Article 169 mentions "the towns and market-towns of my Empire" (градовъ и тръговъ царства ми), and article 170 begins with the words: "In the towns of my Empire" (Оу градовѣх царства ми). In article 7 we read as follows: "And the Great Church¹⁶ shall appoint *protopops*¹⁷ in all cities and market-towns" (И да постави црксовъ велика пропопогъ по всѣхъ градовѣхъ и тръговѣхъ). Article 142 starts with the following words: "Any lord, greater or less, to whom I have given land and towns" (Властѣвамъ и властѣличициемъ коимъ јесть дадо царство ми землю и градовѣ). Similarly we read in article 184: "My lords and prefects who hold the towns and market-towns" (Властѣвле и кефалїе царства ми, кои држје градовѣ и тръговѣ).¹⁸

The population of towns could not take part in the State Council's session unlike in Occidental European feudal countries (see Chapter 9, section 3).

¹³ Burr, "The Code of Stephan Dušan", p. 216; Novaković, *Zakonik*, p. 73; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

¹⁴ Lesnovo monastery was founded in 1341 by Serbian Despot Jovan (John) Oliver. The monastery is located at the edge of Lesnovo village. The closest town is Zletovo (in North Macedonia).

¹⁵ Novaković, *Zakonski spomenici*, p. 678, para. VII.

¹⁶ The expression "Great Church" usually refers to the Patriarchate of Constantinople, but in Dušan's Code to the Serbian Patriarchate.

¹⁷ I.e. "chief priests", from the Greek word πρῶτος = first, and Serbian *pop* (поп, попъ, from Greek πάπας), the ordinary word for a parish priest. On *protopops*, see M. Koprivica, *Popovi i protopopovi srpske crkve u Srednjem veku* ["Chief Priests" and Parish Priests of Serbian Church in Middle Ages], Centar za crkvene studije [Centre for Church Studies] (Niš 2012).

¹⁸ Burr, "The Code of Stephan Dušan", pp. 532, 199, 525, 530; Novaković, *Zakonik*, pp. 133, 134, 12, 109, 142; *Zakonik cara Stefana Dušana*, vol. III, pp. 148, 100, 138, 154.

3 Maritime Towns

The population of littoral cities had special legal status, such as Drivast (Drisht Castle), Ulcinj, Bar, Budva and Kotor.¹⁹ The legal rights of those townsmen were regulated by city statutes,²⁰ among which survive only the Statutes of Kotor and Budva. On the grounds of appellate jurisdiction, preserved in the Ragusan and Venetian Archives, about 20 decrees of Bar's Statute have been partly reconstructed.²¹ The Statute of Ulcinj has not survived, but it is mentioned in sources from the year 1330, together with the Statute of Bar. It is possible that its final edition was completed in the middle of the 14th century.²²

3.1 Kotor

The Community of Kotor had an autonomous identity within mediaeval Serbia, consisting of the town itself, its nearest surroundings called a "district", and four counties—*župa* (Grbalj, Bijela, Krusevice and Ledenice)—given by Serbian King Milutin (1306–1307). Practically, it was the territory of the modern Gulf of Boka Kotorska (Serbian Cyrillic *Бока Коморска*, English "Bay of Kotor", Italian *Bocche di Cattaro*) in Montenegro, except the city of Herzeg Novi (Serbian Cyrillic *Херцег Нови*, Italian *Castelnuovo*, i.e. "New Castle").

During Serbian rule (1186–1370) Kotor had a large amount of autonomy, but the supreme power of the Serbian monarchs was recognized. The Serbian King had some influence on the election of the Prince (*Comes*, *Rector* or *Knez* in Serbian documents) of Kotor, but the sources do not say whether it was a real election or only the confirmation of the Prince. The Statute of Kotor says that the Prince (*Comes*, *Rector*) is *de mandato domini regis*. When the Prince was taking his oath, he promised to govern *ad honorem domini regis*.²³ Other magistrates, taking the oath, did not mention the Serbian King. However, the Serbian monarch could invite some respectable townsmen of Kotor to exercise some civil service in the name of the King. If they refused, they would pay 2000 perpers, the greatest fine provided by the City Statute. Half of this fine would be taken by the Serbian monarch. If the townsmen of Kotor leased the sale of salt

¹⁹ Drivast or Drisht Castle (Latin *Drivastum*, Serbian Cyrillic Дриваст, Albanian *Kalaja e Drishtit*) is a ruined castle above the modern Albanian village Drisht in Shkodër County (Albania). Ulcinj, Bar, Kotor and Budva are today in Montenegro.

²⁰ See Ž. Bujuklić, "Statut", in *LSSV*, pp. 702–707, with a list of references.

²¹ S. Ćirković, "Srednji vijek" ["Middle Ages"], in *Bar pod Rumijom* [Bar under Rumija] (Bar 1984), pp. 9–34.

²² Bujuklić, in *LSSV*, p. 704.

²³ *Statuta et leges civitatis Cathari*, cap. 23 (*Qualiter recipi debeat D. Comes a Communitate cum primo venerit*) and 26 (*De Sacramento Comitis*).

in Budva, contrary to the orders of the Satute, they had to pay half of the fine to the Serbian King, and the other half to their Community. In the year 1315 the City Community forbade the planting of grape-vines on the land of Saint George's monastery near Perast.²⁴ The culprit had to pay a fine of 200 perpers; 10 perpers of that had to be given to the Serbian King.²⁵ All other fines belonged to the Community of Kotor.

The relationships between social classes, Community legislation and the organization of justice were absolutely independent from the Serbian authorities. That fact is confirmed indirectly by the Law Code of Stefan Dušan as no article of the Code regulates the legal status of Kotor (or other maritime towns).

The population of Kotor was divided into several social classes: noblemen, commoners, villagers, serfs and slaves. Noblemen, commoners and slaves lived in the town, while villagers and serfs lived in the surrounding counties.

The Statute of Kotor calls noblemen *nobiles viri, nobilitas* and *sacra nobilitas* (cap. 2). In Serbian legal sources they were called *vlastela*, in the same way as the privileged class in mediaeval Serbia. For the first time in the copy of a charter from 1124, noblemen families were mentioned by name. Among 12 families mentioned in the document, three had names of Slavonic origin (Dabrazza, Nicha de Belez, Goislavus Derze), the rest were of Roman origin. It could be proof that the population of Kotor (especially the noblemen class) was of Roman origin, but in the 14th century the Slavonic element made up the great majority of townsmen. The relationships between noblemen and commoners were not legally regulated until 1361. From then onwards only noblemen could be members of city councils, or be higher magistrates and judges.

The great majority of the population of Kotor was made up of the class called *populus, illi de populo, populares* (commoners). Their occupations were as traders and artisans, but they could exercise the duties of lesser clerks, getting a monthly salary. In the 15th century 800 commoners' families and only 100 noblemen's lived in the town.

Legal documents inform us about the existence of slavery in Kotor. The slaves were the home servants (*servi, servae, ancillae*). They were the object of trade as well. The oldest trace of slavery trade in Kotor can be found in the donation of a certain Petar Crni to Saint Peter's church near Split (1080): Petar Crni says that he bought a slave from the townsmen of Kotor for 3 *solidus*.²⁶ In the

²⁴ Perast (Serbian Cyrillic *Пејасац*, Italian *Perasto*) is an old town in the Bay of Kotor, a few kilometres northwest of Kotor.

²⁵ *Statuta et leges civitatis Cathari*, cap. 352, 311, 281.

²⁶ F. Šišić, *Priručnik izvora hrvatske istorije* [Collection of Sources for Croatian History] (Zagreb 1914), p. 282.

treaty between Kotor and Dubrovnik from 1279, the trade of slaves between the two cities was allowed and the duties for the customs were fixed.²⁷ The Statute of Kotor does not mention the trade in slaves: only a father could sell his illegitimate daughter in case of her immoral behaviour (cap. 210). All other decrees of Kotor's Statute concerned the home servants. A man became a slave by birth or by purchase, while a slave might become free only by the will of his master. Very often the nobles granted freedom to their slaves by will. Such slaves were called *liberticii, liberati a servitute dominorum suorum* (cap. 220). If a slave (male or female) ran away from his master and was captured, the master could do with him as he wanted, without any responsibility to the City authorities (*possit facere de eo vel eis quidquid sibi placuerit et Curia nullam poenam sibi imponere possit*).²⁸ Anyone who hid a deserted slave had to pay the price of a slave, a fine of 10 *perpers* and wages for every day that a slave spent in his house.²⁹ Extremely strict were punishments provided for slaves who dared hit a free man, especially a nobleman. If a slave hit a free man, who is not a nobleman, he would be beaten. If he assaulted a nobleman, he would be branded on the face, driven through the town, and finally flogged. If he attacked his peers (slaves), his master, instead of him, had to pay three *perpers*. If the master did not want to pay, the slave would be caned.³⁰

The population of villagers was called in the Statute *villani, villici* and *rustici*. Some of them were owners of land, but others worked as serfs on noblemen's lands. The obligations of the serfs were regulated by the particular contracts with the owners of the land. The contract could be written, but more frequently would have been verbal, and either limited by term (*ad tempus*) or perpetual (*in perpetuum*). The shortest term was three years, but in practice they were concluded every five, 10, 20 or even more years, and sometimes until the end of a tenant's life (*in vita mea tantum*).

Legislative power in Kotor was exercised by the Great Council (*Consilium Maius* or *Consilium Maius et Generale*), composed only of noblemen older than 18 years.³¹ The main executive power was conferred to the Small Council (*Consilium Minus*) of 13 members: the Prince (*Comes, Rector*) and 12 councillors, elected by the judges for a period of a year. After 1372, the number of councillors

²⁷ J. Radonić, *Dubrovačka akta i povelje I, 1* (Acta et diplomata ragusina, I, 1) (Belgrade 1934), p. 63.

²⁸ *Statuta et leges civitatis Cathari*, cap. 221 (*De servis fugitivis*).

²⁹ Ibid.

³⁰ Cap. 119, *De servis, vel ancillis mittentibus manus in domines suos vel dominas*.

³¹ Cap. 35, *De iis qui possunt esse de Maiori Consilio, et quod Maius Consilium esse non possit si in eodem ad minus non fuerint Consiliarii quadraginta* (anno 1361).

was reduced to six.³² According to information given by the sources the whole population of Kotor made up the General Assembly (*Concio Publica*), which was convoked from time to time. However, from the same sources we cannot understand the relationship between the Assembly and two Councils. It seems that in the 14th century all decisions were made by two Councils and that the people, gathered on the city-square, formally gave their agreement by shouting *placet* ("we like") or *fiat, fiat* ("let it be").³³ The Council of the Invited (*Consilium Rogatorum*) was a new institution introduced in 1372. It had 15 members and very soon concentrated all power in its hands.³⁴

The chief of the administration was the Prince (*Comes, Rector*), without any particular influence, being only *primus inter pares*. Beside him the city had a great number of civil servants and notaries (*notarius*) whose task was to compose and keep documents.

Kotor had special autonomy in the judicial system, but we will discuss about that below (see Part 6).³⁵

3.2 Budva

The economic and political importance of Budva was negligible compared to the other littoral towns nearby, such as Dubrovnik, Kotor, Bar and Ulcinj. It was a small territory composed of a few square kilometres of land and of the small island called Saint Nicolas. The City Statute calls that territory *terra nostra*, but it clearly marks a difference between the town's core within the walls, called *citta*, and the surroundings usually designated as *distretto*—district.³⁶

Budva became a part of the Serbian mediaeval State between 1184 and 1186, when Stefan Nemanja conquered Bar, Ulcinj, Kotor and Budva. The town remained under Serbian rule until the death of Tsar Uroš (1371), but Budva practically became the manor of the feudal family Balšić in 1360. From that time to

³² Cap. 2, *De constitutione et electione consiliariorum Minoris Consilii, per quos debent eligi Officiales*.

³³ As a matter of fact, the sources do not say that the decisions in Kotor were made that way, but we can conclude this by making an analogy with Dubrovnik, where we can find the information. See F. Rački, *Nutarnje stanje Hrvatske prije xii vijeka* [Internal State in Croatia before the 12th Century] (Zagreb 1894), p. 187, and M. Rešetar, "Dubrovačko Veliko vijeće" ("Ragusan Great Council"), *Mjesečna ilustrovana revija* 1 (Dubrovnik 1929), p. 3.

³⁴ Cap. 39.

³⁵ On Kotor, see the study by I. Sindik, *Komunalno uredenje Kotora od druge polovine XII do početka XV stoljeća* [The Municipal Organization of Kotor from the Second Half of the 12th Century until the Beginning of the 15th Century] (Belgrade 1950).

³⁶ On Budva see Ž. Bujuklić, *Pravno uredenje srednjovekovne budvanske komune* [Legal Organization of Mediaeval Budva's Community] (Belgrade 2014).

1442 Budva changed its rulers eight times, and then for the third and final time was occupied by the Republic of Venice.³⁷

Although Budva was a small community, the town had a municipal organization like the other maritime cities. Nevertheless, its autonomy was much lesser than Kotor's.³⁸ The relationship between the Serbian Tsar and the City of Budva was fixed in four chapters at the beginning of the Statute. When the Lord Tsar (*misser lo imperador*) came in the town he had a right of three meals (*tre manzari*), which represents the translation of the Serbian feudal duty called *obrok* (оброкъ). The Tsar's herald (*nuntio*) and ambassador (*ambasador*) had same right. The main tribute of Budva, due to the Serbian Tsar, was called *acrostico* (акростіхон, ακροστίχον, *acrostico*),³⁹ and it was mentioned three times in the first chapter of the Statute. The first time, it is stated that 5 perpers from the *acrostico* belong to the City Prince (*Conte*), who was the Tsar's servant, appointed by the Serbian ruler. The Community had the obligation to give 10 perpers to the Tsar's treasurer when he collected the *acrostico*. And finally, Budva had to give once a year 100 perpers minus 4 dinars to the Tsar.

Budva had to exercise temporary military service, but only when the Serbian Tsar went into the area between Skadar (modern *Shkodër* or *Shkodra* in Albania),⁴⁰ Kotor and Zeta.⁴¹ In that case, the City of Budva had to give 50 soldiers at the Tsar's disposition.

Autonomy in the judicial system did not extend to the crimes of treason (*infedeltade*), homicide (*homicidio*) and trespasses concerning slaves, male or female (*de servo et de serva*), and horses, stolen or dead (*de cavallo rubbato o morto*). All those cases were in the jurisdiction of the Serbian (Imperial) court.⁴²

³⁷ See I. Sindik, "Odnos grada Budve prema vladarima iz dinastije Nemanjića" ["Relation of the City of Budva to the Monarchs from Nemanjić's Dynasty"], *IČ VII* (1957), p. 23, n. 1.

³⁸ See Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, p. 25, n. 3.

³⁹ See D. Bubalo, "Akrostih", in *LSSV*, pp. 4–5.

⁴⁰ Serbian Cyrillic Скадар, Latin *Scodra*, Turkish *İskodra* or *Arnavut İşkenderiyesi*, Italian *Scutari*.

⁴¹ The Principality of Zeta (Serbian Cyrillic *Кнегевина Зета*), in modern-day Montenegro, is the historiographical name for a mediaeval State centred around the Lake of Skadar and the valley of the River Zeta (its source is under Mount Vojnik, and flows eastwards for 91 km until it joins the Morača River, just north of Podgorica). The Serbian crown land of Zeta had become virtually self-governed during the fall of the Serbian Empire, when the Balšić family took control of the region by eliminating opponents in the area after 1360. After the extinction of the Balšić dynasty, Zeta was ruled by the families Lazarević, Branković and Crnojević in succession from the second half of the 14th century until Ottoman conquest in 1498.

⁴² *Stat. Bud.*, cap. 3. On Imperial courts in Serbia see Part 6.

Legislative power in Budva was exercised by the City Council, called the Great Council (*Consiglio Maggiore*) during Venetian rule. It remains unclear whether members of the Council could only be noblemen (*gentil'huomeni*) or any man living in the town. During Serbian rule the Statute mentions the institution being composed of eight councillors (*consiglieri*) and three judges (*giudici*) whose task was to dispute on city taxes and incomes. When Budva became a part of Venice, executive power was conferred to the Small Council (*Consiglio Piccolo*). The Prince (*Conte*) was a foreigner, who governed over the City in the name of the Serbian Tsar and did not have to live in the town. However, if he would live there, the Community would have to provide him a house for living. When he came to town to take his duty he had a right of three meals (*tre manzari*), like the Tsar, his herald and his ambassador. The Prince had to swear that he would respect all old customs and decrees written in the Statute. If he refused to do that, the Community was not obliged to accept him.

The Statute also mentions judges (*giudici*) and a long list of other civil servants.⁴³

4 Towns Conquered from Byzantium

Tsar Dušan confirmed to the towns conquered from Byzantium all the privileges they had under the Byzantine Emperors. Article 124 of the Code states: "Greek towns which the Lord Tsar hath taken, whatsoever chrysobulls and decrees⁴⁴ have been granted to them, whatsoever they have and hold up to the time of this Council,⁴⁵ let them hold, and it is confirmed to them and let no man take anything from them" (Градовѣ гръчъци и коехъ юсть прїель господинъ царь, цю имъ юсть оучинилъ, хрисовѣліе и простаг'ме, цю си имаю гдѣ и дръже до сїега—зїи събора, тозїи да си дръже и да имъ юсть твърдо, и да им се не оузме ницио).⁴⁶ The same decree can be found in the second part of the Code in article 137: "My chrysobulls which I have granted to the towns of my Empire, that which is written in them may not be changed, even by the Lord Tsar himself, nor by any other man. The charters are firm" (Хрисоволи царства ми цю съ оучиненни градо—

⁴³ See Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, pp. 56–67.

⁴⁴ I.e. *prostagme*, from Greek πρόσταγμα, imperial order which has the power of law.

⁴⁵ The Council (*Sabor*, саборъ) from 21 May 1349, when the Law Code was proclaimed.

⁴⁶ Burr, "The Code of Stephan Dušan", p. 521; Novaković, *Zakonik*, p. 95; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

вомъ царства ми, цю имъ пишє да имъ н'беть вол'нь потворити ни господинъ царь, ни иль ктго. да с'х хрисоволы тврьды).⁴⁷ As article 137 does not explicitly mention Greek (Byzantine) towns are not explicitly mentioned, it could be posited that it also concerns the rights of Serbian towns. However, Taranovski has pointed out⁴⁸ that it only refers to the Greek (Byzantine) towns, as is confirmed by article 176, entitled “On Towns” (О градовѣхъ):

All towns which are in my dominions shall be in relation to the law in all things as they were in the days of the first Tsars. For suits which towns-men have between themselves, let them be judged before the prefects of the towns. Or before the Church courts. And if a man from the country have a case with a citizen let him sue before the prefect of the town and before the Church and the clergy. According to the law.

Градове въси по земли царства ми, да с'я на законѣ въсъмъ како с'я били отъ пръвыхъ царь; а за соудове цю имаю мегю собомъ, да се соуде прѣдъ владал'ци град'скыми, и прѣдъ црковными клиросомъ, а кто жоупланинъ при грађанина, да га при прѣдъ владал'цемъ град'скими, и прѣдъ црквим, и прѣдъ клиросом по закону.⁴⁹

The words “as they were in the times of the first Tsars” demonstrate that article 176 concerned Greek (Byzantine) towns, not towns generally (as it was written in the title). “The first Tsars” are the Byzantine Emperors who ruled over those towns before Dušan's conquest. Moreover, the article mentions the presence of ecclesiastical authorities in city courts, a characteristic of Byzantine towns.⁵⁰

Although the citizenry did not represent an autonomous class in mediaeval Serbia, Tsar Dušan several times in his Code showed care for towns as military, administrative and economic centres. We have already spoken about the duty of the building of towns (article 127). A few times the Code mentions a town as the administrative centre of a county—župa (articles 7, 63, 142, 184). Art-

⁴⁷ Burr, “The Code of Stephan Dušan”, p. 524; Novaković, *Zakonik*, p. 104; *Zakonik cara Stefana Dušana*, vol. III, p. 138.

⁴⁸ Taranovski, *Istorija*, vol. I, p. 87.

⁴⁹ Burr, “The Code of Stephan Dušan”, p. 534; Novaković, *Zakonik*, pp. 137–138; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

⁵⁰ See M. Živojinović, “Sudstvo u grčkim oblastima srpskog carstva” [“The Judicial System in the Greek Territories of the Serbian Empire”], *ZRV* 10 (1967), pp. 197–249.

icle 120 protects the right of free commerce: “An imperial customs officer may not hinder nor detain any man in order to sell his goods at a low price: to every man the markets are free and every man may take his goods wheresoever he will” (Цариникъ царевъ да нѣсть вол’ни заславити, или задрѣжати кога чловѣка, да мѣ коуплю продаеть оу без’цѣнїе; вол’но да проходи вѣсакы по трыговѣхъ, и волѡм да походы вѣсакы своимъ коуплю). Article 121 is similar: “And no lord, either small or great, nor any other man may detain and hold as security his own or other merchants, to prevent them from proceeding to the imperial markets. Let every man proceed freely” (Да нѣсть вол’ни властѣлии ни малъ ни великъ, никто любо задрѣжати и зароучити свое людѣи или инѣ трыгов’це да не гредоу на трыговѣ царевѣ да греде вѣсакъ свободно). And article 122 orders: “And if any lord detain a merchant, let him pay three hundred perpers: and if a customs officer detain him, let him pay three hundred perpers” (Ако ли кон властѣлии задрѣжи трыгов’ца, да плати, тѣ. перъперъ; ако ли га цариникъ задрѣжи, да плати тѣ. перъперъ).⁵¹ As can be seen, the market-towns were centres of economic life. Money could be minted only in towns, as was ordered by articles 168, 169 and 170:

Article 168 “Goldsmiths may not be in the counties and the land of my Empire, but in the market-towns, where I have ordered dinars to be minted” (Златара оу жѣпах и оу земли царства ми, нигдѣ да нѣсть, развѣ оу трыговѣхъ гдѣ есть поставило царство ми динаре ковати).

Article 169 “And if there be found a goldsmith outside the towns and market-towns of my Empire in any village, that village shall be scattered and the goldsmith branded: and if there be a goldsmith in a town who coins dinars secretly, he shall be branded and the town shall pay such a fine as the Tsar says” (Аще ли се обрѣте златарь юсвѣнь градовъ и трыговъ царства ми оу коемъ селѣ; да се този село распе, и златарь иждеже. Ако се обрѣте златарь оу градоу ковѣ динаре таинно, да се златарь иждеже и градъ да плати глобоу цю рече царь).

Article 170 “Let the goldsmiths be in the towns of my Empire to strike money and for other purposes” (Оу градовѣхъ царства ми да стое златаріе, и да ковѣ и инѣ потрѣбѣ).⁵²

⁵¹ Burr, “The Code of Stephan Dušan”, p. 520; Novaković, *Zakonik*, pp. 92–94; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

⁵² Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, pp. 133–134; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

Finally, article 125 exempts the towns of the duty of maintenance of officials:

Towns are not liable for the maintenance of officials. When a countryman come, let him go to the inn, either small or great, and let him hand over his horse and all that he hath, that the innkeeper take charge for him entirely. And when the guest leaves, let the innkeeper hand to him all that he hath received from him; and if anything be lost, let him pay its full value.

Градовомъ да н'єсть присѣлице; развѣ кой идѣ жоуплѧнии да ходи къ станѧнииню, или малъ или великъ, да мѹ прѣда конь и стань въсъ; да га съблюдѣ станѧнии съ въсемъ; и къда си поидѣ вън'зїи гость, да моу прѣда станѧнии въсе цио мѹ боудѣ прїель; ако ли моу боудѣ цио погынѣло въсе да мѹ плати.⁵³

53 Burr, "The Code of Stephan Dušan", p. 521; Novaković, *Zakonik*, p. 96; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

Foreigners (Stranci, Странци)

In mediaeval Serbia there were a high number of foreigners, living there either temporarily or permanently. Most foreigners were engaged in trade (Ragusans) and mining (Germans, Saxons), but some of were the King's (Tsar's) servants and others were mercenaries in the army.¹

1 Ragusan Merchants

Trade in the mediaeval Serbia was controlled by the Ragusans (Dubrovčani), who obtained privileges from Serbian rulers from the year 1186 onwards (peace-treaty between Nemanja and his brother Miroslav with Dubrovnik). First of all, freedom of movement was guaranteed to Ragusan merchants. Every disturbance (*задава*) of their business activities was strictly punished. King Dušan, in the treaty with Dubrovnik from 1334, promised that commercial goods would be safe:

My Royal Majesty has created the mercy to all Ragusan merchants who walk through My Royal Land and He promised to them, in the name of Our Lord and the Most Pure Virgin, to take from them nothing without purchase, neither My Royal Prince, nor noblemen in My Royal State, nor even Me the King, to take nothing by force and without purchase, only if they sell; they can freely walk through My Royal Land and nothing can be taken from them by force from My Royal Majesty neither on fairs, nor in any market-town in My Royal Land: they have only to go on market-places and what they sell by their own will to My Royal Majesty, My Royal Majesty will pay them like the other men. And on My Royal faith, nothing is to be changed from what I have written.

Створи милостъ кралевъство ми всемъ тъговцемъ доубрвъчкимъ, кои ходе по земли кралевъства ми, и такози имъ се обѣта кралевъство ми въ Господа Бога и въ прѣчистою Матерь Божию, да имъ не узме нициа кралевъство ми

¹ See S. Šarkić, “Pravni položaj stranaca u srednjovekovnoj Srbiji” [“Legal Position of Foreigners in Mediaeval Serbia”], *ZRPFNS* 45.3 (2011), pp. 53–67.

безъ коупа, ни кнезъ кралевъства ми, ни ки властелинъ оу земли кралевъства ми да не оузмѣ ница безъ коупа, ни само кралевъство ми да не оузмѣ силомъ безъ коупа, развѣ да си продаю, свободно ходѣ по земли кралевъства ми, ни на панагюри, ни оу коюмъ тръгou оу земли кралевъства ми, да имъ ница не оузмѣ силомъ кралевъство ми, развѣ да ходѣ по тръговѣхъ, и цо своомъ воломъ продаю кралевъствоу ми, да имъ кралевъство ми пакта коупъ како и прочи людине. И на мою вѣроу на кралевоу да се ни оу чемъ не потвори кралевъство ми, цо съмъ писаль).²

In the treaty of Tsar Dušan from 1349, the privileges were confirmed and even enlarged with the following observation: “only not to carry the weapon” (тъкмо врѣжна да не носѣ).³ This means that trade in weapons was forbidden; if the Ragusan merchants did not respect that order, their goods would be taken away (Кто ли се вбреете понесъ врѣжна ё инъ зем’лю, да мѫ се все този врѣжне ёзме).⁴

The Ragusans (Dubrovčani) had some privileges in the judiciary system too (see Part 6). *Udava* and *izam*, two kinds of reprisals of Ragusan merchants, were forbidden to Serbian subjects. *Udava* means arbitrary capture of a debtor and *izam* collection of debt by force (for more details see Chapter 6).

Enjoying legal protection in Serbia, Ragusans (Dubrovčani) had to respect peace in the State. In case they did not respect it, they were given a term of three months to leave Serbia and take their property. That order can be found in the treaty of King Dragutin from 1281: “If they do something wrong to My Royal Land and they do not apologise to Me, let them give a term of three months, in purpose that the merchants went in the town [Dubrovnik] with everything of their own” (Ако ли цо погрѣше земли кралевъства ми и не исправе ми се, да имъ се да вѣдѣниe трьми мѣсцеци, іако си могъ тръжници ихъ штити ё градъ съ всѣмъ своимъ).⁵ According to the provisions of Tsar Dušan’s treaty (20 September 1349), in case of war between Serbia and Dubrovnik, Ragusan merchants had a term of six months to leave Serbia peacefully (И ако се царство ми с’вади з Дубровникомъ, цо се вбреатаю Дубровчанѣ по земли царства ми и кралевѣ да имъ се постави рокъ за .5. месецъ да се испрате свободно беззабавѣ да походе).⁶

The most important privilege they had was common responsibility for any damage caused to Ragusan merchants. In the contract of Great Župan Stefan Nemanjić (1205), the responsibility was on the county (*župa*). The county

² Novaković, *Zakonski spomenici*, pp. 166–167.

³ Edited by D. Jećmenica, *ssa* 11 (2012), p. 39.

⁴ Ibid.

⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 266.

⁶ Edited by D. Jećmenica, *ssa* 11 (2012), pp. 39–40.

(*župa*) had the options of either delivering the culprit or giving an indemnity (Оу којен ли се жоупт џо испакости, таџи жоупта вола да да ќривыце вола да плати).⁷ However, in King Milutin's treaty (14 September 1302), responsibility was on the nearest village. If the village could not pay, the King himself would give the indemnity (Да при коимъ их селѣ ч'тета наидѣ, да плати село ближ'нє. Ако село не плати, да п'лати кралевьство ми).⁸ The treaty of Stefan Dečanski (25 March 1326), beside nearest villages, mentions the responsibility of the town, as well. If those communities could not pay, the monarch himself would compensate the damage from his private property (Ако ли им' се која ч'тета Ѹчини шњедези, да имъ сплате школ'на села вола град, који бљде. Не сплати ли имъ, да имъ кралевьство ми плати из моје кљке).⁹ Tsar Dušan, in his treaty from 1349, changed the order of things: the indemnity would be given directly from Tsar, and after that the Tsar would ask for compensation from the trespasser (Ако ли се обреџе кто Ѹземъ џо любо по силѣ Ѹземли царства ми и кралевь, в'се този да плати царство ми шномѣзи комъ бљде џо Ѹзетоу, а тогази ќрив'ца да иже царство ми и Ѹз'ме на пнемъ, кто бљде Ѹзель и Ѹчиниль злочине).¹⁰

King Milutin, in the treaty of 1302, exempts the Ragusans from military service (и да не ходе на воискъ), and from building towns and giving guards (И града да не работаю ни га блюдъ). It was obvious that this contract spoke of Ragusans living permanently in Serbia, because in the same document we can read as follows: "And their houses, not to be taken, neither from King, nor from noblemen" (И кљке да им' се не пеѹате ни шт крала ни шд, властель).¹¹ However, in the treaty of Prince (*Knez*) Lazar with Dubrovnik from 9 January 1387 it says: "And if any Ragusan has hereditary estate in Novo Brdo¹² let him built and keep the town; those who are guests and do not have hereditary estate, let them be according to their will" (и кои се је дубровчанинъ забациниль Ѹновашъ бръдъ, тъзи да зиге градъ и да чвва; кто ли съ гости и не съ се забацинили да имъ је на вали).¹³ This means that those Ragusans who were the proprietors of estates in Novo Brdo had the feudal duty of building towns (*gradozidanije*) and giving guards (*gradobljudenije*). In Serbia, Ragusans were exempt from so-called *ius albinagii*—the right of the King to pilfer a foreigner's property after death.

⁷ Novaković, *Zakonski spomenici*, 136; Mošin, Ćirković, and Sindik, *Zbornik*, p. 454. The editors of *Zbornik* think that the treaty was concluded between 1313 and 1316 and should be assigned to King Dragutin.

⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

⁹ Edited by N. Porčić, *ssa* 6 (2007), p. 20.

¹⁰ Edited by D. Jećmenica, *ssa* 11 (2012), pp. 38–39.

¹¹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 344, 345.

¹² Novo Brdo was the most important mining centre in mediaeval Serbia.

¹³ Edited by Mladevović, *Povelje kneza Lazara*, p. 193.

This is confirmed in the abovementioned treaty: "And if any Ragusan dies in the country that of My Lordship, his property does not belong to My Lordship, neither to my headman, nor to ... Before he dies, he can transfer his property to any Ragusan, living in my land" (и ако се слѣчи смртъ комѣ Дѣбровчанинъ ѿ земли господства ми, цио је негова иманина, да за тои не има послана господство ми ни кефалина ... тъкмо да си сме комѣ га да инизи на смрти Дѣбровчанинъ).¹⁴ According to the text of this treaty, any Ragusan living in Serbia could have left a will or nominate some of his fellow townsmen who would later deliver the estate to his heirs.¹⁵

2 German Miners (*sasi*, саси)

The miners in Serbia were of German (Saxon) origin and that is the reason why people called them *Sasi* (Saxons). They came to Serbia from Hungary in the middle of the 13th century.¹⁶ We do not know much about their privileges. In the treaty with Dubrovnik of 1302, King Milutin said that the Ragusans had to pay a fine for a murder (so-called *vražda*) like the Saxons (Ако ли кръвъ єчини дѣтињъ, да га пода господаръ; ако ли га не пода, да да плати господаръ в'раждъ, како и Саси плакатю).¹⁷ According to this information can we conclude that the Saxons (*Sasi*) had the same privileges as the Ragusans?

¹⁴ Novaković, *Zakonski spomenici*, p. 202, para. xix; Mladenović, *Povelje kneza Lazara*, p. 193.

¹⁵ On the history of Dubrovnik and its relationship with Serbia, see C. Jireček, "Die Bedeutung von Ragusa in der Handelsgeschichte des Mittelalters", *Almanach der kaiserlichen Akademie der Wissenschaften in Wien* (1899), pp. 367–452; G. Čremošnik, "Uvozna trgovina Srbije god. 1282 i 1283" ["Serbian Import Trade of the Years 1282 and 1283"], *Spomenik ska LXII drugi razred* 51 (1925), pp. 59–68; Kos, "Dubrovačko-srpski ugovori do sredine 13-og veka"; Jasinski, "Ugovori srpskih vladara sa Dubrovnikom kao spomenici starog srpskog prava"; M. Dinić, "Dubrovačka srednjovekovna karavanska trgovina" ["Ragusan Mediaeval Caravan Trade"], *JIC* 3 (1937), pp. 119–146 = *Srpske zemlje u srednjem veku* [Serbian Lands in the Middle Ages] (Belgrade 1978), pp. 305–330; B. Krekić, *Dubrovnik in the 14th and 15th Centuries. A City between East and West* (Norman OK 1972) and *Dubrovnik, Italy and Balkans in the Late Middle Ages* (London 1980); V. Foretić, *Povijest Dubrovnika do 1808. Prvi dio: Od osnutka do 1526* [History of Dubrovnik until 1808. First Part: From the Foundation to 1526] (Zagreb 1980); A. Di Vittorio, *Ragusa e il Mediterraneo: roulo e funzioni di una repubblica marinara tra medioevo ed eta moderna* (Bari 1990).

¹⁶ The exact date of their arrival in Serbia is not known, but the first mention of *Sasi* can be found in King Uroš's charter to the monastery of Holy Virgin in the City of Ston (c.1252). In the text we read as follows: и оуž бръдо над Сасе (Mošin, Ćirković, and Sindik, *Zbornik*, p. 197).

¹⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

Dušan's Law Code (article 123) mentions only one privilege of Saxons: a right to clear the forests for their business:

On market towns: Wheresoever Saxons have cleared forest up to the date of this Council, that land let them have. And if they have unlawfully taken any land from any lord, let the lord sue them according to the law of Sainted King [King Milutin, Tsar's grandfather]. But from henceforth a Saxon may not clear and that forest which he clears shall not belong to him, nor shall they settle people there, but it shall stand empty, so that the forest grow. Let no man forbid a Saxon so much timber as he need for his business, so much let him fell.

О тръговеъхъ цю сѹ коуд'в посекли саси горбъ, до сїегазїи събора, тоузїи землю да си имаю. ако сѹ комъ властѣлии без' праф'ды оузеали землю, да се соуд'в съ нимъ властѣле закономъ светаго краліа. а вт съда напрѣда сасинъ да не съче; а цю сече whногазїи да не тежи, ни людїи да не сагіа, тък'мо да стон пльста да расте гора. никто да не забрани сасинъ горбъ, колико юсть тръбве тръгъ толикозїи да съче.¹⁸

As we can see, the Saxons who were engaged in mining and metallurgy used to clear forests and squat in the same way as the original Serbs did. Tsar Dušan was determined to stop this, though at the same time allowed them to take timber they needed for fuel or construction work.¹⁹

3 Other Foreigners

Beside Ragusans and Saxons, other foreigners lived in Serbia as well, but we only have fragmentary information about the privileges they had. Saint George's charter, for example, says that everyone has a right to come to a fair (*panadur*, παναγιορь) and sell his goods, be it Greek, Bulgarian, Serb, Latin,

¹⁸ Burr, "The Code of Stephan Dušan", pp. 520–521; Novaković, *Zakonik*, p. 94; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

¹⁹ On mining in mediaeval Serbia see M. Dinić, *Za istoriju rudarstva u srednjovekovnoj Srbiji i Bosni I-II* [On the History of Mining in Mediaeval Serbia and Bosnia I-II] (Belgrade 1955); D. Kovačević, "Dans la Serbie et la Bosnie médiévaux: les mines d'or et d'argent", *Annales, Economies, Société, Civilisation* 2 (1960), pp. 248–258; S. Ćirković, "Production of Gold, Silver and Copper in the Central Parts of the Balkans, Precious Metals in the Age of Expansion", *Beiträge zur Wirtschaftsgeschichte* 2 (1979), pp. 41–69, and "Dubrovčani kao preduzetnici u rudarstvu Srbije i Bosne" ["Ragusans as the Entrepreneurs in Mining of

Albanian or Vlach (И всаки юто приходи на нъ, любо Гъръсъ или Българинъ, или Сърбинъ, Латинъ, Арабанасинъ, Влахъ).²⁰ That certainly means that foreigners enjoyed the right of free commerce. Article 173 of Dušan's Code mentions among the noblemen Greeks, Germans and Serbs, so we can conclude that foreigners had admission to the most privileged class. Foreigners were even present at the Imperial Court, and as the Tsar's servants they got immunity charters, such as was the case with the Ragusan nobleman Maroje Gučetić and the Byzantine George Phokopoulos.²¹ It is well known that the Serbian rulers had a mercenary army, but we do not know anything for certain about the legal status of those soldiers.²²

Serbia and Bosnia"] *Acta historico-oeconomica Iugoslaviae* 6 (1979), pp. 1–20; S. Ćirković, D. Kovačević-Kojić, and R. Ćuk, *Staro srpsko rudarstvo* [Old Serbian Mining] (Belgrade 2002). See also S. Ćirković, "Sasi", in *LSSV*, p. 649.

²⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 328.

²¹ D. Ječmenica, "Povelja cara Stefana Dušana za Dubrovčanina Maroja Gučetića" ["Charter of the Emperor Stefan Dušan to Maroje Gučetić from Ragusa"], *SSA* 12 (2013), pp. 67–78; Solovjev and Mošin, *Diplomata graeca*, pp. 180–182.

²² See Novaković, *Stara srpska vojska*; G. Škrivanić, "O najamničkoj vojski u srednjovekovnoj Srbiji" ["On the Mercenary Army in Mediaeval Serbia"], *Vojnoistorijski glasnik* 1 (1954), pp. 80–93; N. Stijepović, *Srpska feudalna vojska* [Serbian Feudal Army] (Belgrade 1954); A. Veselinović, "Vojska u srednjovekovnoj Srbiji" ["The Army in Mediaeval Serbia"], *Vojno-storijiski glasnik* 1–2 (1994), pp. 384–422.

PART 3

Constitutional Law

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Constitutional Ideology

1 Dušan's Law Code—Constitution or Not?

Modern constitutions came into being at the end of the 18th century as an accomplishment of bourgeois revolutions, but in the science of constitutional law there is an opinion that mankind has exclusively lived under a regime of constitutions in a material sense since ancient times up to the end of the 18th century.¹ “With the exception of a few texts, very precious because they were rare, like *Magna Charta* (1215), the *Bill of Rights* (1689) or the *Act of Settlement* (1701) in England, political organization of the individual States was established by the end of the 18th century exclusively through custom.”² England has been considered the cradle of modern constitutionality, and the just mentioned documents have been quoted as examples in almost all textbooks and tractates on constitutions. In this way a great “injustice” has been done to some mediaeval States which, frequently wrongly, have been considered absolutist and despotic, but in which elements of constitutionality were certainly present. In the first place, we think of Byzantium, whose numerous law texts contained ideas which even today would belong to a constitution. As Serbian mediaeval law was under the great influence of Byzantine law, we could now pose the question as to whether there were elements of constitutionality in mediaeval Serbia too, or more concretely: can the Code of Stefan Dušan be considered as a kind of constitution of the Serbian State? At the end of the 19th and beginning of 20th centuries, historians gave the affirmative answer to the second part of this question. According to Dragiša Mijušković,³ the Code of Stefan Dušan is a kind of constitution of a mediaeval State (*neka vrsta ustava naše srednjovekovne države*), and some other historians agreed with him.⁴ A

¹ See M. Jovičić, *O ustavu* [On Constitution] (Belgrade 1977), p. 14. Cf. pp. 9–28.

² G. Burdeau, *Traité de science politique, tome IV: Le statut de pouvoir dans l'État* (Paris 1969), p. 12.

³ Mijušković, “Sistem Dušanovog zakonika”, especially p. 160.

⁴ Gerasimović, *Staro srpsko pravo*, pp. 3, 66–67; S. Đorić, “Osnovna pitanja o Dušanovom zakoniku” [“The Basic Questions on Dušan's Law Code”], *APDN* 17.3 (1914), p. 204; D. Alimić, *Upravne oblasti u staroj srpskoj carevini* [Administrative Regions in the Old Serbian Empire] (Belgrade 1921), p. 9; T. Taranovski, “Načelo zakonitosti u Zakoniku cara Stefana Dušana” [“The Principle of Legality in Dušan's Law Code”], *Spomenica pedesetogodišnjice profesorskog rada S.M. Lozanića* (Belgrade 1922), p. 146, where besides accepting Mijušković's opinion he says

similar opinion was held by Stojan Novaković. He wrote that “according to all Byzantine laws, translated earlier or at that time, the Code of Stefan Dušan is a constitutional imperial document which affirms them and protects them from all present and future abuses” (*prema svim vizantijskim zakonima, prevedenim iz ranije ili u to isto vreme, Dušanov Zakonik stoji kao ustavni carski akt koji ih utvrđuje i štiti od svih dotadašnjih ili budućih zloupotreba*).⁵ But, on the contrary, according to Jaša Prodanović “Dušan’s laws do not have character of genuine constitutional laws, because Serbia was an absolutist monarchy” (*Dušanovi zakoni nemaju karakter pravih ustavnih zakona, jer je Srbija bila absolutna monarhija*). However, at the same time the author recognizes that some of the articles of Stefan Dušan’s Code could be put into today’s constitution or constitutional law, concluding: “But in an absolutist monarchy there is no place for a constitution. Not only executive, but also legislative, and to certain extend, judiciary power belonged to the ruler” (*Ali o ustavu ne može biti reči u absolutnoj monarhiji. Ne samo upravna, nego i zakonodavna, pa donekle i sudska vlast pripadala je vladaru*).⁶

The articles of the Code of Stefan Dušan that, from a modern constitutional-legal view, are of the utmost validity are 171, 172 and 105.

Article 105 from the first part of the Code, proclaimed in 1349, reads: “Imperial charters⁷ which are produced before the judges in any matter, which my Code contradicts, and which the court finds invalid shall be brought and submitted to me” (Книге цареве које приносе прѣд, соудїе за що любо, тере их потвори законикъ царства ми, що съмъ записаљ коју любо книгоу; анеји книзе које потвори соудъ, тезїи книзе да оуздмоу соудїе и да их принесѫ прѣд царство ми).⁸

that “the Code should have been seen as one of those fundamental laws (*leges fundamentales*) that also existed in the Middle Ages”, and most recently M. Kostrenić, “Dušanov zakonik kao odraz stvarnosti svoga vremena” [“Dušan’s Law Code as a Reflection of the Reality of its Epoch”], in *Zbornik u čast šeste stogodišnjice Zakonika cara Dušana I* (Belgrade 1951), p. 41; B. Blagoev, “Primat zakona u Dušanovom Zakoniku” [“Priority of Law in Dušan’s Law Code”], *APFB* 2–3 (1961), pp. 177–184, and D. Bogdanović, “Dušanovo zakonodavstvo” [“Dušan’s Legislation”], in *ISN*, vol. 1 (Belgrade 1981), p. 565.

⁵ Novaković, *Sintagma*, p. xxviii.

⁶ J. Prodanović, *Ustavni razvitak i ustavne borbe u Srbiji* [Constitutional Development and Constitutional Struggles in Serbia] (Belgrade 1936), p. 7. In this case we do not intend to discuss the character of the mediaeval Serbian State, but Prodanović’s conclusion that Dušan’s Serbia was an absolutist monarchy certainly is not correct. For more details about the character of Nemanjić’s State, see Janković, *Istorija*, pp. 77–81.

⁷ The word translated “charters” is *knjige* (књиге), literally “books”. The expression *knjiga* (book) usually means imperial written order in the Code.

⁸ Burr, “The Code of Stephan Dušan”, p. 517; Novaković, *Zakonik*, p. 80; *Zakonik cara Stefana Dušana*, vol. III, p. 128.

Article 171, established in 1354, changed the provision of article 105 and provided that the Emperor's order contrary to the law should be immediately abandoned, and that judges should judge according to justice: "A further edict of My Majesty. If the Tsar write a writ, either from anger or from love or by grace for someone and that writ transgress the Code, and be not according to right and the law as written in the Code, the judges shall not obey that writ but shall adjudge according to justice" (С је повелјва царство ми; а иже пише книг џ царство ми, или по сръч'је или по люб'ви, или по милости за нѣкога, а ћида зи книга разара законикъ, не по правд'је и по закону џ како пише законикъ, соудје тоузи книгу џ да не в'броују, тък'мо да соудје и врьшє џ како је по правд'је).⁹ And article 172 provided that judges should judge by law, but not from fear of the Emperor: "Every judge shall judge according to the Code, justly, as written in the Code, and shall not judge by fear of me, the Tsar" (Всаке соудје да соудје по законику џ право џ како пише оу законикоу, а да не соудје по страху џ царства ми).¹⁰

The provisions of these articles are relevant for the judiciary, but they are, from a constitutional-legal aspect, of great importance because they restrict the prerogatives of the ruler as a supreme organ of power, and put the law above the Emperor, which was undoubtedly at least a constitutional element. How did they come into the Code of Stefan Dušan? Were they the result of an independent development of Serbian mediaeval law, or were they taken from somewhere else?

Although even Valtazar Bogišić was very hesitant as to the independence of these articles of the Code of Stefan Dušan,¹¹ Theodore Zigelj (Фёдор Зигель) was firmly convinced that they were independent,¹² and Stojan Novaković¹³ and the majority of the researchers of Stefan Dušan's Code agreed with him.¹⁴ It never crossed the minds of Serbian historians to connect articles 171 and 172

⁹ Burr, "The Code of Stephan Dušan", p. 533; Novaković, *Zakonik*, p. 134; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

¹⁰ Burr, "The Code of Stephan Dušan", p. 533; Novaković, *Zakonik*, p. 135; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

¹¹ V. Bogišić, *Pisani zakoni na slovenskom jugu, I. Zakoni izdani najvišom vlašću u samostalnim državama* [Written Laws on Slavonic South, I. Laws Edited by Supreme Legislative Power in Independent States] (Zagreb 1872), p. 55.

¹² Zigelj, *Zakonik Stefana Dušana*, pp. 99, 117. According to Zigelj (p. 33), "The Code expresses better and more clearly those things that already existed in the customs" ("Законникъ, по видимому больше устанавливъ то, что уже жило въ обычаяхъ").

¹³ Novaković, *Zakonik*, p. XLVII.

¹⁴ M. Vesnić, "Justinianovi zakoni i staro srpsko pravo" ["Justinian's Statutes and the Old Serbian Law"], *Branič* 3 (1889), pp. 137–148 and 221–230, making reference to Stojan Bošković, says (p. 230): "We can positively say that Dušan's Code was 'the result of national and hist-

with Byzantine law, because at that time they considered the Eastern Roman Empire as despotic, in which the Emperor's will was always the supreme law:

Mediaeval religious intolerance relying on the ancient schism between the Hellenistic and Roman worlds, left to the new world the legacy of a completely distorted picture of Byzantium as a sleepy, stagnant State in a long process of disgusting decay. It was impossible to think that such a State might have had laws of such great ethical value and great statesmanship, as were the laws in Dušan's Code. As its supreme achievement, articles 171 and 172 were appreciated ... and it was believed that they were the result of the Serbian legislature, or maybe the reflection of Tsar Dušan's own opinion.¹⁵

The second half of the 19th century was a period of violent constitutional struggle in Serbia, and a middle class in a new State proudly emphasized the ethically high norms of the Code of Stefan Dušan as a result of the independent development of Serbian mediaeval law. If foreign influences were ever mentioned, or if a similarity with other mediaeval laws was investigated, then, under the influence of panslavic romanticism, it was done with other Slavonic, primarily Czech and Polish, law.¹⁶

Nikola Radojčić shattered Romantic fallacies and prejudices. Accepting the view of the great British Byzantine scholar John Bagnell Bury about Byzantium as a legal State and about the existence of a Byzantine unwritten but established constitution,¹⁷ Radojčić pointed out in two treatises¹⁸ the great dependence of the Code of Stefan Dušan on Byzantine law, especially on *Basilika*. In another treatise he showed that articles 171 and 172 were taken over directly from Byzantine law.¹⁹ Starting from the *Codex Theodosianus*, and going on to the decrees (*novellae*) of Emperor Andronikos III, Dušan's contemporary, he convincingly showed that in Byzantium law was above the Emperor's

orical development' (S. Bošković), and not at all the supplement or simple translation of Justinian's and other laws of mediaeval Byzantium".

¹⁵ Radojčić, "Vizantijsko pravo u Dušanovu Zakoniku", p. 14 (author's translation from the Serbian).

¹⁶ A list of works concerning the comparison of Dušan's Law Code with laws of the other Slavonic States is given by Radojčić, "Snaga zakona", p. 104, n. 1.

¹⁷ B.J. Bury, *Constitution of the Later Roman Empire* (Cambridge 1910), pp. 7, 9, 29–30.

¹⁸ Radojčić, "Vizantijsko pravo u Dušanovu Zakoniku" and "Dušanov Zakonik i vizantijsko pravo".

¹⁹ Radojčić, "Snaga zakona", pp. 100–139.

orders. Among decrees of that kind, very prominent were the provisions of *Basilika* VII, 1, 16 and VII, 1, 17, as well as the decree (*novella*) of the Emperor Manuel Comnenos in 1159, which might be considered as a model for articles 171 and 172.²⁰ It cannot be established with certainty from where these articles were taken, but most probably they were taken directly from the *Basilika*. The text of the *Basilika* which corresponds to article 171 of Dušan's Code is VII, 1, 16 and reads: "Πάς δὲ δικαστής ... τηρείτω τοὺς νόμους καὶ κατὰ τούτους φερέτω τὰς ψήφους, καὶ κἄν εἰ συμβαίη κέλευσιν ἡμετέραν ἐν μέσῳ κἄν εἰ θεῖον τύπον, κἄν εἰ πραγματικὸς εἴη φοιτήσας λέγων τοιώσδε χρῆναι τὴν δίκην τεμεῖν, ἀκολουθείτω τῷ νόμῳ. Ἡμεῖς γάρ ἔκεινο βουλόμεθα κρατεῖν, ὅπερ οἱ ἡμέτεροι βούλονται νόμοι". The text which corresponds to article 172 is VII, 1, 17, and reads: "Θεσπίζομεν ... κατὰ τοὺς γενικοὺς ἡμῶν νόμους τὰς δίκας ἐξετάζεσθαι τε καὶ τέμνεσθαι τὸ γάρ ἐπὶ τῇ τῶν νόμων κρινόμενον ἔξουσίᾳ οὐκ ἀν δεηθείη τινὸς ἔξωθεν διατυπώσεως".²¹

Besides articles 171 and 172, which restrict a ruler, and from the constitutional-legal view represent the most interesting provisions in the Law Code of Stefan Dušan, there are many other interesting passages which regulate the foundations of the state and social order, and which would belong to a constitution. The Code insists in many of its provisions that obligations are executed in accordance with the law and that nothing is done against the law (πρᾶξα-κονί). Such provisions could be classified in three groups: 1) provisions about the judiciary; 2) regulation of the relations between classes of people; and 3) regulation of governmental activities.²²

²⁰ Considering that Radojčić was right, Taranovski (*Istorija*, vol. I, pp. 229–230) also quoted as a possible source of article 171, besides the *Basilika*, one of the provisions of *Kotor's Statute*, which foresees a case in which a citizen of Kotor received a charter from the King which would exclude the opposite party from the competent legal court who would be sentenced by the ruler to pay a fine to the ruler (*si aliquis ex nostris civibus praesumeret facere aliqua cum dominatione, per que poena aliqua cadat dominationi, cum carta vel sine carta seu povella, quae a dominatione portata fuerit*). That sort of case would be answered with violence and would be punished with a public fine of 500 *perpers*, and the damaged party would get indemnification. It is obvious that the illegal charter had been proclaimed as null and that the court punished illegality (*contra consuetudinem civitatis*). See *Statuta et Leges Civitatis Cathari*, cap. 349 (*De cartis et povellis adductis a dominatione contra consuetudinem civitatis. Anno Domini MCCC primo*), p. 189.

²¹ *Basilicorum Libri LX, series A, volumen I, textus librorum I–VIII*, ed. Scheltema, Van der Wal, and Holwerda, p. 303. As far as article 105 is concerned, it is also based on the *Basilika*, but on several titles such as II, 6, 6; II, 6, 16; II, 6, 23. For more details about this see Radojčić, "Snaga zakona", p. 136, n. 1.

²² Taranovski, *Istorija*, vol. I, pp. 224–225.

Article 84 belongs to the first group. It abolishes the old forms of individual judgment and provides that everyone is to be judged according the law (*тъкто да се съуди по законъ*). Article 30 provides that no one is to be persecuted without a trial, and if someone did an injustice to someone, they should appear before a court. Article 182 provides the competence of the judges, that each in his region decides according to law. The absence of a plaintiff before the court discharges the defendant of any responsibility if he spent the time determined by law at the court (article 89). For village boundaries, the law determines the witnesses (article 80). Articles 132, 152 and 154 regulate the jury by law (so-called *sakletvenici*). Law also, according to article 180, determines the payment of fines. And to this group also belong articles 171 and 172, which have a broader significance, as already mentioned.

To the second group, which regulates the relations between classes, belongs article 42, which determines the obligations of the noble landowner (*vlastela baštinici*), such as taxes (*soće*) and military service. Articles 31 and 65 provide the parish priest with necessary land (“three fields”—*tri njive*). Article 159 prescribes that the governors of villages should, by law, allow merchants into the village. Articles 142 and 139 protect the dependent inhabitants from the noblemen’s despotism and determine the villagers’ obligations toward their feudal lords if the lord violates their authority as prescribed by law. Article 139 is connected with article 68, which equalizes the obligations of all villagers (*Меропгъхомъ законъ по всичи земли*). It is forbidden to take from a serf anything that the law forbids (*а и то прѣзаконъ, нищо да мѣ се не оузви*). It should be mentioned that the rights of the upper classes were guaranteed by special privileges, by chrysobulls and *prostagmas*, which were accorded to the noblemen and to the cities probably before the proclamation of the Code, and which Tsar Stefan Dušan confirmed in articles 39, 40, 124 and 137.

In the administrative area, article 63 should be mentioned, which regulates the income of the *kephales* (lit. “headmen”, the governor of a city). Article 187 regulates some police measures taken when the Emperor and the Empress travel, and article 176 determines the regulation of the towns.

Let us finally go back to the question posed at the beginning of this chapter. Is the Code of Stefan Dušan a constitution from a modern point of view? Although it contains a number of elements usually mentioned in all definitions of a constitution (written document, document with the supreme legal power which regulates the foundations of the social and state order of a State), an interpretation which would accept it as a constitution would undoubtedly be too forced, and we do not wish to engage in arguments of that nature. However, it remains as an evident fact that in Dušan’s Law Code there were many elements which today would belong to constitutional law, as much as those in

Magna Carta of 1215. We can even say with certainty that Magna Carta, usually considered as the first mediaeval document with constitutional characteristics, had no provisions of legal validity such as those contained in articles 171 and 172 of Dušan's Law Code.²³

2 The Idea of Rome and Hierarchical World Order

During the Middle Ages, the idea of Rome as the centre of a universal and ecumenical empire, and the whole Christian Church as well, was present in all European nations. Naturally, the Eastern Roman Empire (Byzantium) considered itself as the only successor of the Roman Empire, and according to that ideology, only their monarchs could carry the title "Emperor of the Romans" (βασιλεὺς τῶν Ρωμαίων). However, the idea of Rome as a universal and eternal empire became attractive to the German and Slavonic rulers. Charlemagne in the West (800) and Simon of Bulgaria in the East (913) started to call themselves emperors. The Byzantines protested, trying to find political and legal arguments that would contest the existence of other "Empires", but finally they had to accept reality. In that way the number of emperors increased, and this meant a decay of the one and only universal Christian Empire, but this multiplication did not lead to negation or oblivion of the centuries-long idea.²⁴

From the time of their settling in the Balkans in the 7th century the Serbs lived in the territory of the Eastern Roman Empire, and they became familiar with Byzantine constitutional ideology expressed as a hierarchical world order. According to this model not all States were equal; rather a strict order existed amongst them, reflecting the importance of each. At the head of this hierarchy was Byzantium, the legitimate holder of the idea of a Universal Empire; only its monarchs could bear the title of Emperor. All other mediaeval States had a rank dependent upon their political importance, which might vary.²⁵

²³ See S. Šarkić, "Elements of Constitutionality in Medieval Serbian Law", *Ius commune* 15 (1988), pp. 43–55, and "Norme ustavnopravnog karaktera u srednjovekovnom srpskom pravu" ["Constitutional Norms in Serbian Medieval Law"], in *Dva veka savremene ustavnosti, zbornik radova sa naučnog skupa održanog 17. i 18. septembra 1987 (Deux siècles du constitutionalisme moderne, recueil des travaux de la colloque scientifique tenue le 17 et le 18 septembre 1987)* (Belgrade 1990), pp. 525–533.

²⁴ See S. Ćirković, "Between Kingdom and Empire: Dušan's State 1346–1355, Reconsidered", in *Byzantium and Serbia in the 14th Century* (Athens 1996), pp. 110–120, especially p. 119.

²⁵ On the hierarchical world order see three studies by G. Ostrogorski: "Die byzantinische Staatenhierarchie", *Seminarium Kondakovianum* 8 (1936), pp. 41–61; "The Byzantine Emperor and the Hierarchical World Order", and "Srbija i vizantijska hijerarhija država" [Ser-

The heads of these States, pursuing this construct, formed a so-called “family of monarchs”, associated in a fictive parentage. At the head of the family, as *pater familias*, stood the Emperor of Byzantium, whilst different degrees of relationship were conferred on other monarchs depending upon their political importance. Charlemagne, for example, became the Emperor’s “brother” (ἀδελφός) and his German, French and Italian successors were proud of this *adelphos* distinction. English Kings were merely the Emperor’s “friends” (φίλοι), whilst at the bottom of the scale came those insignificant monarchs considered by Byzantium to be part of the household property rather than a part of a family.²⁶

The influence within Serbia of the Byzantine ideology of a hierarchical world order is obvious from the text of a charter presented to the monastery of Hilandar in 1198, by the founder of the Serbian dynasty, Stefan Nemanja. It begins as follows:

In the beginning, God created the heavens and the earth and human beings on it, he blessed them and gave them power over the whole of his creation. And some of them he made emperors, others princes, others lords and provided all of them with herds to be grazed and protected from every harm. So, brothers, the merciful Lord established the Greeks as emperors and the Hungarians as kings and he classed all men and gave the law ... According to all his infinite grace and mercy He endowed our ancestors and our forefathers to rule this Serbian Land ... and appointed me, christened in holy baptism Stefan Nemanja, the Great Župan.

Искони сътвори Богъ Небо и Земълю, и чловѣкы на неи и благослови є и дастъ имъ власть на вси твари своеи, и постави ѿни царе, дроугие кнезе, или владиски, и ко моуждє дастъ пасти стадо свое и съблouдати є ѿт всакога зъла находещаго на не. Темъже братие Богъ прѣмилостиви оутвръди Г҃ръкес царими а Оугре кралыми, и когождє езника раздѣливъ и законъ давъ ... Тѣмъже по мънозѣни єго и неизъмѣрънѣ милости и чловѣколюбию, дарова нашимъ прадѣдомъ и нашимъ дѣдомъ ѿбладати сиовъ Земловъ Сръбъсковъ ... и постави ме велиега жоупана, нареченаго въ свѣтѣмъ кръщени Стѣфана Неманоу.²⁷

bia and Byzantine Hierarchy of States"], *O knezu Lazaru* (1975), pp. 125–137. Cf. Tarantovski, *Istorija*, vol. 1, pp. 119–127, 237–238. On monarchical ideology in Nemanjić's State see B. Bojović, *L'idéologie monarchique dans les hagiо-biographies dynastiques du Moyen Age serbe*, Orientalia Christiana Analecta 248 (Rome 1995) and S. Marjanović-Dušanić, *Vladarska ideologija Nemanjića* [Monarchic Ideology of Nemanjić] (Belgrade 1997).

²⁶ F. Dölger, "Die 'Familie der Könige' im Mittelalter", in *Byzanz und die europäische Staatenwelt* (Darmstadt 1964), pp. 43 sq. and 38, n. 8.

²⁷ Čorović, *Spisi Svetog Save*, p. 1; Mošin, Ćirković, and Sindik, *Zbornik*, p. 68.

So, for Stefan Nemanja, only the Greeks (the Byzantines) could be Emperors, the Hungarians could only be Kings, but by emphasizing the fact that his monarchical power was derived from God and was based on the grace of God, he indicated his independence from the Byzantine Emperor. Consequently by the end of the 12th century Serbia had become an independent State within the Byzantine system of a hierarchical world order.

A year later (1199), Stefan Nemanjić, the son and successor of Nemanja, in a letter to Pope Innocent III,²⁸ equalized the source of power in the national State (grace of God) with the universal and ecumenical power of the Pope. Stefan wrote to the Pope that he is Great Župan by the grace of God, just as Pope Innocent is Pope by the same grace (*Innocentio Dei gratia summo pontifici et universalii pape Romane ecclesie ... Stephanus eadem gratia ... magnus iuppanus totius Servye*).²⁹

The independence of Serbian rulers was pointed out much more after the coronation of Stefan Nemanjić as King in 1217, when the title of *samodržac* (самодржач) was added to the royal title. The Serbian word *samodržac* represents an exact translation of the Greek word αὐτοκράτωρ and Latin term *imperator*.³⁰ The expression *autokrator* (initially a simple translation of the Roman title *imperator*) later achieved great importance in Byzantium because it designated the supreme Emperor, and from the end of the 11th century it became a permanent part of the formula of the Emperor's signature expressed as: (Name of the Emperor) ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΡΩΜΑΙΩΝ ο (Name of the Dynasty). However, the title of *samodržac* (αὐτοκράτωρ) never achieved the same importance in Serbia. King Stefan Nemanjić did not carry, nor did he even pretend to have, the Imperial crown. Using the title of

²⁸ Latin *Innocentius*, reigned from 1198 to his death 1216. His birth name was *Lotario dei Conti di Segni*.

²⁹ Solovjev, *Odabrani spomenici*, p. 14. Although Nemanja and his son Stefan emphasize their independence, they insist on the fact that Stefan is a son-in-law of the crowned-by-God *Kyr* (Lord) Alexios, Emperor of the Greeks (Alexios III Angel) and that he carries the high Byzantine title of *sebastokrator*. See Miklosich, *Monumenta serbica*, p. 5, and A. Solovjev, "Hilandarska povelja velikoga župana Stefana (Prvovenčanog) iz god. 1200–1202" ["Charter of the Great Župan Stefan to the Monastery of Hilandar from the Year 1200–1202"], *PKJIF* 5 (1925), p. 9. Cf. B. Ferjančić, "Sebastokratori u Vizantiji" ["Sebastokrators in Byzantium"], *ZRVJ* 11 (1968), pp. 141–192, especially pp. 168–171.

³⁰ The authors of Serbian 13th-century hagiographies (Stefan the First-Crowned, Domentian and Theodosios) called Stefan Nemanja and his son Stefan (before coronation) *samodržci* (plural from *samodržac*), but as G. Ostrogorski, "Avtokrator i samodržac", in *Complete works*, Book IV (Belgrade 1969), pp. 321–332, proved, the title was in official use after Stefan's coronation in 1217.

autokrator (samodržac), he wanted only to emphasize his complete independence of his foreign and domestic policy.³¹

A step in elevation of the Serbian Kingdom to an Empire was done during the rule of King Milutin. Milutin was very proud of his relationship with the Palaiologoi dynasty. In one of his charters presented to the monastery of Hilandar (1313–1316), he called his father-in-law “My Lord and parent, the Holy Greek Emperor Kyr Andronikos and his beloved son, brother of My Royal Majesty Kyr Michael the Greek Emperor” (ου γοσποδινα ми и родитеља, светаго цара грчкаго курь Андроника и οу възлюбленаго сына њего, брата краљевства ми, курь Михаила, цара грчкаго).³² Later considering himself more powerful than the Byzantine Emperors, Milutin started to call himself in some documents “Emperor of the whole Serbian land” (Царь всѣхъ Србскихъ Земль) and “the true-believing Tsar” (благовѣрни царь).³³ In a charter giving the village of Tmorane to the monastery of Hilandar, we can find a picture of King Milutin in a solemn position and with imperial ornaments, surrounded with the inscription: “Oh Christ the God, the true-believing Tsar Stefan of all Serbian land” (О Христе Евзе, правовѣрни царь Стѣфан всѣхъ Србскихъ Земль).³⁴ According to the Byzantine writer Nikephoros Gregoras, the Empress Irene (Ειρήνη) gave to her son-in-law (Serbian King Milutin) some objects that had the character of Imperial insignia.³⁵

The triumph of the idea of Rome came in Serbia after Dušan's proclamation of an Empire, and it was expressed in the charter from about 1346, announcing his legislation:

And appointed me to be lord and ruler of all of my fatherland and I ruled 16 years and then I was strengthened with greater honour by the right hand of the Almighty Lord as the most magnificent Joseph was strengthened with wisdom and appointed to be ruler of many peoples and of all of the Pharaoh's land and the whole Egypt. In the same manner by His grace I was translated from the Kingdom to the Orthodox Empire. And he gave me in my hands as to the Great Emperor Constantine lands

³¹ Ostrogorski, “Avtokrator i samodržac”, pp. 302, 337 and 338.

³² Mošin, Ćirković, and Sindik, *Zbornik*, pp. 440, 441.

³³ V. Mošin, “Povelja kralja Milutina Karejskoj ѡељи 1318” [“Charter of King Milutin to the Kellion of Karea 1318”], *Glasnik SND* 19 (1938), p. 71. sq.

³⁴ V. Mošin, “Srpsko carstvo” [“Serbian Empire”], *Hrišćansko delo* 4, jul-august, Skopje 1939, p. 11sq.

³⁵ Nicefori Gregorae, *Byzantina Historia* 1–II, ed. L. Schopenus (Bonn 1829–1830); III, ed. I. Bekkerus (Bonn 1855), para. VII, 5, Bonnae I, pp. 241–242. On the rule of King Milutin, see Mavrommatis, *La fondation de l'empire serbe*.

and countries and coasts and large towns of the Greek Empire, as we have already said. And I was crowned with the wreath donated by God to the Empire in the year 6854, indiction 14, on the great and most holy feast of the Resurrection by the hand and with the blessing of the Most Holy Patriarch Ioanikie and by all archpriests of the Serbian Council. Also by the hand and with the blessing of the Most Holy Patriarch of Bulgaria Lord Simeon and by all archpriests of the Council of Bulgaria. And with the prayers and blessing of the reverend Council of the Holy Mountain of Athos and by all the elders of the Athonite Council, even by archpriests of the Greek throne and of all the Council, who had decided that I should reign as Emperor. All that happened not according to my desire, neither by some force, but according to the blessing of God and others who appointed me to be Emperor for all Orthodox Faithful in order to glorify the One-in essence-Trinity for ever.

И постави ме господина и съдружитела въсем зем'ли ютьчъства моего. И царьства лѣтъ .SI. и потомъ бол'шю чистю ѿт выш'наго въсех дръжитела десницето оукрѣпленъ бых, таюже бо и прѣкраснаго Іисуфа цвѣломъ дрѣмъ оукрѣпи и сътвори его цара многимъ езыкомъ и въсемъ стежаню Фарашновъ и въсемъ Ступитъ. Тъмъ же образомъ по того милости и мене прѣложи ѿт кралиевъства на православ'ное царьство, и въсехъ дастъ ми въ рѣцѣ таюже и великомъ константинъ царъ, зем'ле и въсехъ страны и поморіа и велике градове царьства гръцкаго, таюже и прѣждѣ рѣхомъ, и Богомъ дарованымъ вѣн'цемъ царьскымъ вѣн'чанъ бых на царьство въ лѣто 599д мѣсца априла .д-и дънь въ велики и многосвѣти и радостни праздникъ въскръсенїа Христова, благословенъмъ рѣкою прѣвсвѣченънаго патріархъ Иваникія и въсеми архіереи събора сръбскаго. Тогожде благословенъмъ и рѣкою прѣвсвѣченънаго патріархъ българскаго курь Сумешна и въсеми архіереи събора българскаго и молитвами же благословенъмъ въсечъстнаго лика Светыи Гори Афона протомъже и въсеми игумени и всеми старцы събора светогорскаго, паче же и ѿт архіерей прѣстола гръцкаго и въсего събора, иже изволише ѿ мнѣ царьствовать. Симъ же въсемъ быв'шимъ не моимъ изволенiemъ ни некою силою, ны по Божию изволеню и иниxмъ благословенъмъ поставиша цара въ всакъ православнъю вѣрѣ, Троицъ єдино соуци нюю славити въ вѣкы аминъ).³⁶

36 Novaković, *Zakonik*, p. 4; *Zakonik cara Stefana Dušana*, vol. III, pp. 428, 430. The charter is only preserved in the Rakovac manuscript, copied c.1700 from an earlier transcript. Malcolm Burr did not include this important text in his translation of Dušan's Law Code. On this charter, see also S. Marjanović-Dušanić, "Elementi carskog programa u Dušanovu

The charter clearly shows the Byzantine constitutional ideology adopted in Serbia: by proclaiming his State an Empire, Dušan achieved his supreme goal. Serbia reached the highest rank in the hierarchical world order, and the whole procedure was done according to the Byzantine model. However, Dušan was conscious that he could not consider himself absolutely equal to the Emperor from Constantinople. In order to emphasize the difference between his status and the status of the ecumenical Emperor in Constantinople, Dušan signs his charters written in Greek by the formula ΣΤΕΦΑΝΟΣ ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΣΕΡΒΙΑΣ ΚΑΙ ΡΩΜΑΝΙΑΣ. As we can see, the expression “Emperor of the Romans” (βασιλεὺς τῶν Ῥωμαίων) was replaced by phrase “Emperor of Serbia and Romania”. Although this difference seems to be insignificant, the fact is that no one Byzantine Emperor ever used the title “Emperor of Romania” (βασιλεὺς Ῥωμανίας). Dušan, although he desired it, could not pretend to be “Emperor of the Romans”, because the legitimate Emperor John v was still alive, holding power in Constantinople, and Dušan did not ever contest his Imperial rights. That is the reason why he replaced, in the charters written in Greek (one of the major world languages of the time), the ethnic elements with geographical ones. That way he limited his power on the part of “Roman territories”, and by a tacit agreement he recognized the Byzantine hierarchical world order in which only one sovereign had a right to the supreme title.³⁷ However, Dušan’s charters written in Serbian were mostly signed as “Stefan, in Christ the God, Tsar of the Serbs and Greeks” (Стефанъ въ Христа Бога царь Сръблемъ и Гъркомъ).³⁸ There are two important observations to make concerning this difference between the signatures in Greek and Serbian charters: 1) Greek charters emphasize the geographical elements

voj povelji uz ‘Zakonik’” [“Elements of the Imperial Programme in Dušan’s Charter by the Code”], *PKJIF* 65–66 (1999–2000), pp. 3–19.

³⁷ See Lj. Maksimović, “Grci i Romani u srpskoj vladarskoj tituli” [“The Greeks and Romania in the Serbian Sovereign Title”], *ZRVI* 12 (1970), pp. 61–78. The question has been re-examined by D. Korać, “The Newly Discovered Charters of Stefan Dušan for the Monastery of Philotheou”, *ZRVI* 27–28 (1989), pp. 185–216. Cf. N. Oikonomides, “Emperor of the Romans—Emperor of the Romania”, *Byzantium and Serbia in the 14th Century* (Athens 1996), pp. 121–128.

³⁸ The title does not have a permanent form and appears in the different formats. Sometimes we find only “Stefan in Christ the God the true-believing [or only ‘believing’] Tsar” (Стефанъ въ Христа Бога елагвъерни [or only въерни] царь) without any ethnic or geographical elements. In some charters, besides the regular terms (“Tsar of the Serbs and Greeks”), we can find different additions, such as, of the “Occidental Lands” (западнѣи страни), “Maritime Lands” (Поморни), “All Dys” (всемоу Дису), meaning West, from Greek δύστις = West. See M. Dinić, “Srpska vladarska titula za vreme carstva” [“Serbian Sovereign Title during the Epoch of the Empire”], *ZRVI* 5 (1958), pp. 9–19.

(“Emperor of Serbia and Romania”), whilst the Serbian documents insist on ethnic ones (“Emperor of Serbs and Greeks”); 2) from Serbian charters the term *samodržac* (αὐτοκράτωρ) disappears, designating political independence; once the State had become an Empire, there was no more necessity of emphasizing its independence.³⁹

3 Duties of the Emperor

Serbian legal documents took several texts from Byzantine legal sources, which were part of Byzantine constitutional ideology. Among others, the translators of Matheas Blastares’ *Syntagma* took over details from the *Epanagoge* (Ἐπαναγωγὴ, “Return to the Point”), or more correctly *Eisagoge* (Εἰσαγωγὴ τοῦ νόμου, “Introduction to the Law”, a Byzantine law book promulgated in 886: begun under Basil I, it was completed under his son and successor Leo VI), a Byzantine (Roman) teaching on the Emperor’s duties:

The Tsar is a lawful ruler, the common good of all subjects; he does not do good out of partiality, nor does he punish out of antipathy, but according to the virtues of the subjects, and like a judge at a trial, gives the words equally, and does not give the benefit to any one to the detriment of others. The Tsar’s goal is to preserve and foster existing values, and to re-establish with care those lost, and to acquire by wisdom and righteous means and enterprises those which are missing. The task of the Tsar is to do good, for which he is called a benefactor; when he stops doing good, then, according to the opinion of the ancients, it is considered that he has perverted the Tsar’s mission. The Tsar must distinguish himself in Orthodoxy and piousness and be renowned in his favour before God.

Царь есть законъ поиса прѣдстательство, об'ште благо всѣмъ послушни-
комъ; ни же по пристрастію благотворе, ни же за соупротивострастіе моуче,
ни противъ когожде добротѣли обладаемыиъ, іакоже нѣкы подвигопо-
ложникъ, почьсти равно подаде а не тьштаа благодѣаніа на врѣдъ дѹгы-

³⁹ Ostrogorski, “Avtokrator i samodržac”, p. 338. On the influence of the idea of Rome on Tsar Dušan, see S. Šarkić, “L'idée de Rome dans la pensée et l'action du Tsar Dušan”, in *Da Roma alla terza Roma, documenti e studi, rendiconti del x seminario, Campidoglio 21 aprile 1990, Idea giuridica e politica di Roma e personalità storiche*, ed. P. Catalano and P. Siniscalco (Rome 1991), vol. I, pp. 141–164.

имъ нѣкыимъ дароу. Мысль юсть цароу пребывающтихъ же и соуштихъ силь благостю храненїе и оутврьжденїе и погыб'шіихъ въдростныимъ прилежанїемъ въсприетиie, и не имѣемыиъ прѣмоудростю и праведнымии н'равы и хитрост'ми притежанїе. Кон'цъ цароу юже благодѣати; т'бъ же и благодѣатель глаголеть се; и ѹегда отъ благодѣанїа изнеможеть, мнить се погоузывша по древныхъ царскою начрьтанїе. Нарочить въ православии и благочестїи дльж'нъ юсть быти царь, и въ ръвенїи божиј прослоути.⁴⁰

Such solemn ideas about the Emperor's rule could be found in some of Dušan's charters, written in Greek, as well. The idea of *benefaction* (εὐεργεσία), for example, is present in the first chrysobull to the Iberian (Georgian) monastery of Iviron (Ιβήρον) on Holy Mountain (January 1346), which begins as follows: "Like it is normal to breath, the same way it is normal for the Emperor to do good" ("Ωσπερ τὸ ἀναπνεῖν οἰκεῖον καὶ κατὰ φύσιν, οὕτω καὶ τὸ εὐεργετεῖν τοῖς βασιλεῦσιν ἔστιν").⁴¹ Dušan's chrysobull to the monastery Xenophontos (Ξενοφῶντος) on Holy Mountain from June 1352 expresses the idea of an Emperor imitating God (μίμησις Θεοῦ): "It is necessary to Me the Emperor, if it is possible, to become similar to God, and the most philanthropic to take care of those who are under His power" (Καὶ τῇ βασιλείᾳ μου δέον κατὰ τὸ δυνατὸν ἐξομοιοῦσθαι Θεῷ, [καὶ] φιλανθρώπως ἄγαν τοὺς ὑπὸ χειρα αὐτῆς οἰκονομεῖν).⁴²

4 Concordance or “Symphonia” between the Church and State

The regulation of the relations between the Church and the State in Serbia stems from biblical and Byzantine ideas about the origins of authority. According to Christian teaching the source of both the Emperor's and the Church's

⁴⁰ *Syntagma* B-5, ed. Novaković, pp. 127–128 = *Epanagoge* II, 1–3, 5, ed. J. and P. Zepos, *Ius graecoromanum*, vol. II, pp. 240–241: "Βασιλεύς ἔστιν ἔννομος ἐπιστασία, κοινὸν ἀγαθὸν πάσι τοῖς ὑπηκόοις, μήτε κατὰ ἀντιπάθειαν τιμωρῶν, μήτε κατὰ προσπάθειαν ἀγαθοποιῶν, ἀλλ' ἀνάλογός τις ἀγωνοθέτης τὰ βραβεῖα παρεχόμενος. Σκοπὸς τῷ βασιλεῖ τῶν τε ὅντων καὶ ὑπαρχόντων δυνάμεων δι' ἀγαθότητος ἡ φυλακὴ καὶ ἀσφάλεια, καὶ τῶν ἀπολωλότων δι' ἀγρύπνου ἐπιμελείας ἡ ἀνάληψις, καὶ τῶν ἀπόντων διὰ σφίας καὶ δικαίων τροπαίων καὶ ἐπιτηδεύσεων ἡ ἀνάκτησις. Τέλος τῷ βασιλεῖ τὸ εὐεργετεῖν, διὸ καὶ εὐεργέτης λέγεται, καὶ ἡγίκα τῆς εὐεργεσίας ἐξατονήσῃ, δοκεῖ κιβδηλεύειν κατὰ τοὺς παλαιοὺς τὸν βασιλικὸν χαρακτῆρα ... Ἐπιστημότατος ἐν ὁρθοδοξίᾳ καὶ εὐστεβείᾳ ὀφεῖται εἶναι ὁ βασιλεύς, καὶ ἐν ζῆλῳ θειῷ διαβόητος".

⁴¹ Solovjev and Mošin, *Diplomata graeca*, p. 38. See H. Hunger, *Prooimion. Elemente der byzantinischen Kaiseridee in der Arengen der Urkunden* (Vienna 1964), p. 141.

⁴² Solovjev and Mošin, *Diplomata graeca*, p. 186. Cf. Hunger, *Prooimion*, p. 62.

authorities is God. His will has to be obeyed in the serving of people by both, the Emperor and the Patriarch. On these foundations, the system of *sympoνia* (συμφωνία) was established and evolved, that is of concord, harmony and mutuality, formulated in the introduction of Emperor Justinian's *Novella vi* in 535. It is from there that John Scholastikos ('Ιωάννης Σχολαστικός) took over teaching about *sympoνia* and introduced it into his nomokanonic *Codex* consisting of 87 chapters (6th century), which was subsequently used by Saint Sabba in his work on the Serbian Nomokanon—*Zakonopravilo*. Thanks to this the Serbs had a literal translation of the text dealing with the theory of *sympoνia* between the State and Church as early as 1219.⁴³

The text of Justinian's *Novella vi* begins as follows:

The greatest gifts of God among men, bestowed by philanthropy from above, are clergy and empire (ἱερωσύνη καὶ βασιλεία, sacerdotium et imperium, свещеніиъство же и цркство). First, to serve to what is divine, and second, to govern and take care of what is human. Both, coming from the same principle, adorn the human life, because nothing can be so important to the Emperors as the honour of the clergy, who always pray to God, even to themselves. If the first ones are irreproachable in every matter and if they would have courage in front of God, and the second ones start decorating the cities and those who are under them, regularly and fittingly, it will become a pleasant concordance (συμφωνία, consonantia, съгласие) which gives everything good to human life. And it will happen, we believe, if the supervising of ecclesiastical rules (τῶν ἱερῶν κανονῶν, sacrarum regularum, свещеных правиль) would be kept, which the Apostles—righteously praised and glorified as the eye-witnesses of the Word of God (θεοῦ λόγου, dei verbi, божијо словоу)—have conferred, and the Saint Fathers have kept and told.⁴⁴

As we can see, the essence of this theory consists in the idea that both institutions equally respect Divine Law. Such a solution makes it theoretically

⁴³ See M. Petrović, "Saglasje ili 'Simfonija' izmedu crkve i države u Srbiji za vreme kneza Lazara" ["Concordance or 'Symphony' between the Church and the State in Serbia at the Time of Prince Lazar"], in *O Zakonopravilu ili Nomokanonu Svetoga Save, rasprave* [On the Zakonopravilo or Nomocanon by Saint Sava, Treaties] (Belgrade 1990), pp. 73–98. On "symphony" in Byzantium, see M. Petrović, *'Ο Νομοχάνων εἰς τὰ τίτλος καὶ οἱ βυζαντῖνοι σχολασταί* (Athens 1970), p. 54 sq.

⁴⁴ Iust. *Nov. vi*, praefatio, ed. R. Schoell and G. Kroll, pp. 35–36; Petrović, *Zakonopravilo ili Nomokanon Svetoga Save*, pp. 213a–b.

impossible to establish supremacy of one over the other, that is, it excludes the possibility of the appearance of *caesaropapism* or *papocaesarism*.

This teaching about *sympiphonia* was completely acceptable to the Orthodox Serbia of the Middle Ages. It was confirmed by the legal solutions of Dušan's Law Code, as well as in the charters of Serbian rulers before him and heads of the Church. The Church and the State help each other in that the representatives of the spiritual and secular authorities do not transgress their own limits; they do not interfere in each other's spheres but, on the contrary, support one another in their common interest, which brings the people both material and spiritual progress.

However, when the *Syntagma* of Matheas Blastares was translated in Serbia, the Serbs found out that the interpretations of the distinguished canonists Theodore Balsamon and Demetrios Chomatianos (Δημήτριος Χωματηνός or Χοματηνός) were not in harmony with a teaching about *sympiphonia* from Justinian's *Novella vi*. Under their influence, Matheas Blastares omitted the following chapter from the *Epanagoge*: "The Emperor is presumed to enforce and maintain, first and foremost all that is set out in the divine scriptures; then the doctrines laid down by the seven Ecumenical Councils; and further, and in addition, the received Romaic laws" ("Υπόκειται ἐκδικεῖν καὶ διατηρεῖν ὁ βασιλεὺς πρῶτον μὲν πάντα τὰ ἐν τῇ θείᾳ γραφῇ γεγραμμένα, ἔπειτα δὲ καὶ τὰ παρὰ τῶν ἐπτὰ ἀγίων συνόδων δογματισθέντα, ἔτι δὲ καὶ τοὺς ἐγκεκριμένους ῥωμαϊκοὺς νόμους").⁴⁵ That fact made the possibility for the Emperor to interfere in some ecclesiastical matters, such as the election of bishops, changing of the Patriarch, determination of Church district's rank, etc.⁴⁶

5 Concept of the State

Serbian sources clearly show that at the end of the 12th century, the idea of the State was well-established. Legal documents call the Serbian State Δρῆ-ζαβα (država, State), but more often Сръбска Земља (Srpska Zemlja, Serbian Land) and sometimes отаџивство (otačastvo, patria, fatherland). However, *Serbian Land* exists independently of monarch and dynasty and is not a hereditary estate. Although Stefan Nemanja has pointed out that the ruler's monarchical power comes from God, he and his successors were conscious that Serbia is not their estate and that the Serbian Land, by the same grace of God could

45 *Epanagoge ii*, 4, ed. Zepos, *Ius graecoromanum*, vol. II, p. 240.

46 Troicki, "Crkveno-politička ideologija", pp. 187–189.

be governed by someone else. Such a concept came into Serbia under Byzantine influence, because in Byzantium Emperors and dynasties changed, but the Empire always remained.⁴⁷

Several examples taken from the legal documents can illustrate very well these conclusions. In the charter presented to the monastery of Hilandar (1198), the founder of the Serbian dynasty, Stefan Nemanja, says: "According to all his infinite grace and philanthropy He [God] endowed our ancestors and our forefathers to rule this Serbian Land ... and appointed me, christened in holy baptism Stefan Nemanja, the Great Župan" (Тѣмъ же по мъноѹзи его и наизъмѣбрьни миости и члѹвѣколюбию, дарова нашими праѹдѣомъ и нашими дѣдомъ ѿбладати сиѹвъ Земловъ Ср҃бъсковъ... и постави ме велиега жоѹпана, нареѹенаго въ сеѹтѣмъ кѹщени Стѣфана Неманоу).⁴⁸ However, his son and successor, Stefan the First Crowned, in a charter issued between 1217 and 1227, giving the island of Mljet (today in Croatia) to the monastery of Saint Mary (on the same island), says: "Or if someone will be the lord after me, either my child, or someone who is close to me, or somebody else" (Или кѹто и бѹде влѧдика по мнѹ, или моје дѣтє или присни мои, или ины кѹто).⁴⁹ Stefan's son, King Vladislav, in a charter presented to the monastery of Saint Nicholas on the island Vranjina (1 September 1241–31 August 1242), says a little bit differently that: "Everything that was in favour of this temple has not to be abused by Me, the sinful King Vladislav, neither by my brother, nor by my son, nor by my grandson, nor by my Royal relative, nor by someone whom God chooses to be the sovereign" (Да не потворите сего оутврѹженаго сеѹму храмоу мною гѹбшнимъ кѹдомъ Владиславомъ ни братъ мои, ни синъ мои, ни оунѹкъ мои, ни соуродникъ кѹдомъ ми, или кѹго изволи Богъ быти господъствоѹща).⁵⁰ In the charter presented to the monastery of Hilandar (1276–1281), either by King Dragutin or King Milutin,⁵¹

⁴⁷ Cf. B. Nedeljković, "O saborima i zakonodavnoj delatnosti u Srbiji" ["On Councils and Legislative Activity in Serbia"], in *Zakonik cara Stefana Dušana I, Struški i Atonski rukopis* (Belgrade 1975), pp. 31–32.

⁴⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 68.

⁴⁹ Ibid., p. 109.

⁵⁰ Ibid., p. 163.

⁵¹ Novaković, *Zakonski spomenici*, p. 387; Stojanović, *Stari srpski hrisovulji, akti, biografije, letopisi, tipici, pomenici, zapisi i dr.*, p. 12; L. Petit and B. Korablev, *Actes de Chilandar, Vizantijskij vremennik* 19 (1915), *Priloženie I, Actes slaves*, 6, I, p. 70; V. Mošin and L. Slaveva, *Spomenici na srednovekovnata i ponovnata istorija na Makedonija*, vol. I, pp. 274–275; and Mošin, Ćirković, and Sindik, *Zbornik*, p. 268, attributed this charter to King Dragutin. On the contrary, M. Živojinović, "Da li je sačuvana povelja kralja Dragutina Hilandaru?" ["Is the Charter of King Dragutin to the Monastery of Hilandar Preserved?"], *ZRVT* 32 (1993), pp. 129–136, expressed the opinion that the charter was issued around 1299 by King Milutin.

it was said: “And whoever it pleases God to be the lord of the Serbian Land, either the son of Me the King, or grandson, or grand-grandson, or from others” (даје људи Богу да буде господин Српске земље или син краљевства ми, или внуку, или правнуку, или унуком).⁵² Confirming the gift of *protosebastos* Hrelja to the monastery of Hilandar (6 May 1328), King Stefan Dečanski says: “And after the death of Me the King, whoever God wishes to rule, either the son of Me the King, or My Royal relative, or anyone else to whom God gives [power]” (Обаче и по съмрти краљевства ми јегоже Богу изволи господство-уюца, или син краљевства ми, или соуродник краљевства ми, или кто любо јемоуже дасть Богу).⁵³ Tsar Dušan, in the charter giving privileges to the monastery of Hilandar (17 May 1355), says very briefly: “Whoever God likes to be the lord in the fatherland of Me the Tsar, either the son or the relative of Me the Tsar, or by God’s judgment from other parentage” (јегоже изволи Богу господ-ствовати въ земли отъчества царства ми, или синъ или соуродникъ царства ми, или Божиимъ соудомъ одъ иного рода).⁵⁴

⁵² Mošin, Ćirković, and Sindik, *Zbornik*, p. 269.

⁵³ Novaković, *Zakonski spomenici*, p. 401, para. XIV.

⁵⁴ A. Solovjev, “Dva priloga proučavanju Dušanove države” [“Two Contributions to the Study of Dušan’s State”], *Glasnik SND* 2.1–2 (1927), p. 29.

Organization of Power

The Serbian mediaeval State was a monarchy with the sovereign holding supreme power. However, so-called State Councils (*Državni sabori*), a representative body consisting of the most powerful lords, worldly and ecclesiastical, had great influence over monarch. The sources mention a great number of court dignitaries too, and some local civil servants. The Serbian Orthodox Church also had great power and influence.

1 Monarch

1.1 Titles

On the titles of the first monarchs who ruled over Serbia from the time of the settlement of the Serbs in the Balkans, we know nothing, although in modern Serbian history textbooks the word *knez*¹ has been used. Scarce information is given by Byzantine writers, using the title taken from Greek antiquity—*archon* (ἄρχων). For example, in the story of Constantine VII Porphyrogennetos (*De administrando imperio*, Chapter 29) on Serbs (Σέρβλοι), Croats (Χρωβάτοι), Zachlumites (Ζαχλούμοι), Terbouniotes (Τερβουνιώται), Kanalites (Καναλίται), Diokletians (Διοκλητιανοί) and “Arentani who are also called Pagani” (καὶ Ἀρενταῖοι, οἱ καὶ Παγανοί προσαγορευόμενοι), he wrote: “Princes, as they say, these nations had non, but only ‘zupans’, elders, as is the rule in the other Slavonic regions” (“Ἄρχοντας δέ, ὡς φασι, ταῦτα τὰ ἔθνη μὴ ἔχειν, πλὴν ζουπάνους γέροντας, καθὼς καὶ αἱ λοιπαὶ Σκλαβηνίαι ἔχουσι τύπον”).² In Chapter 32, speaking on the settlement of the Serbs, the Emperor-historian says: “When, therefore, that same Serbian prince died who had claimed the Emperor’s [Herakleios] protection, his son ruled in succession, and thereafter his grandson, and in like manner the succeeding princes from his family” (αὐτοῦ οὖν τοῦ ἀρχοντος τοῦ Σέρβλου, τοῦ εἰς τὸν βασιλέα προσφυγόντος, τελευτήσαντος, κατὰ διαδοχὴν ἥρξεν ὁ νίος αὐτοῦ, καὶ πάλιν ὁ ἔγγων, καὶ οὕτως ἐκ τῆς γενεᾶς αὐτοῦ οἱ καθεξῆς ἄρχοντες).³

¹ The Slavonic word *knez* is of German origin (from *kuningaz*, *kuniggs* or *König*). See Skok, *Etimologijski rječnik*, vol. II, pp. 108–109.

² Constantine Pophyrogenitus, *De administrando imperio*, pp. 124–125.

³ Ibid., pp. 154–155. Constantine Porphyrogenetos uses the same title, *archon*, for the rulers of Bulgaria (p. 154).

Anna Comnena, describing the battles of the Serbian ruler Bolkan (Vukan) and her father Emperor Alexius, wrote: “This Bolkan was ruler of all Dalmatia [i.e. Serbia], a fine orator and a man of action” (Ο γάρ Βολκάνος ἀνὴρ δὲ οὗτος τὸ πᾶν τῆς ἀρχῆς τῶν Δαλματῶν φέρων, δεινὸς μὲν εἰπεῖν, δεινὸς δὲ καταπράξασθαι),⁴ but she did not mention his title. A few lines further, when she describes the subordination of Bolkan to the Emperor, she says: “Soon Bolkan presented himself confidently before the Emperor, accompanied by his kinsmen and the leading župans. The hostages (his own nephews Uresis [Uroš] and Stephen Bolkan, with others to the total of 20) were promptly handed over” (Ἐκεῖνος δὲ θύτης τεθαρρηκὼς προσελγήθει συνεπαγόμενος τούς τε συγγενεῖς καὶ ἔκκριτους τῶν ζουπάνων καὶ προθύμως ὅμήρους τοὺς αὐτοῦ ἀνεψιαδεῖς τῷ αὐτοκράτορι παραδέδωκε, τόν τε Οὐρεσιν καλούμενον καὶ Στέφανον τὸν Βολκάνον καὶ ἑτέρους τὸν εἴκοσιν ἀριθμὸν ἀποπληροῦντας).⁵ Twelfth-century sources, speaking of Uroš and Stephen Bolkan (Stefan Vukan), use the title of *Archizupan* (ἀρχίζουπάνος), i.e. Great Župan.

That “Great Župan” was the title of Serbian monarchs from 12th century is confirmed indirectly by Byzantine writer John Kinnamos (Ιωάννης Κίνναμος), when he says that Bosnia is not subordinated to the *Archizupan* of Serbia (ἔστι δὲ ή Βόσθνα οὐ τῷ Σερβίων ἀρχιζουπάνῳ καὶ αὐτῇ εἴκουσα).⁶

Stefan Nemanja, the founder of the Serbian dynasty, carried the title of Great Župan (вѣли or вѣлики жѣпань in Serbian documents; μέγας ζουπάνος or ἀρχίζουπάνος in Greek texts; *megaiupanos*, *magnus iupanus* in Latin texts; and *magnus comes* in Hungarian documents).⁷ This title appears for the first time in a peace-treaty with Dubrovnik (27 September 1186), where at the end of the Latin text we find the signature in Serbian: “I, the Great Župan, swore and signed” (Азъ вељи жѣпанъ кљњу се и подьписахъ).⁸ At the end of the charter

⁴ *Alexiad* IX, 4, 1. Greek text according to the edition by B. Leib and A. Commène, *Alexiade* (Paris 1967), vol. II, p. 166. English translation by E.R.A. Sewter, *The Alexiad of Anna Comnena* (Harmondsworth, Baltimore MA, Victoria Australia 1969), p. 276.

⁵ *Alexiad* IX, 10, 1, Sewter, pp. 289–290; Leib, vol. II, p. 184.

⁶ *Ioannis Cinnami epitome rerum ab Ioanne et Alexio Comnenis gestarum*, rec. A. Meineke (Bonn 1836), p. 103.

⁷ Župan was a ruler of “župa”, the Old Slavonic name for counties. According to the story of the priest from Diokleia (*Letopis popa Dukljanina*, ed. Mošin, pp. 27, 31, 34, 36, 38, 46), the first Župan was a certain Tihomilj, who got this title from the Serbian Prince Časlav (tenth century), for his merits in war against Hungarians. It seems that the title originates from the clan system, but later on it became the court’s title. During the reign of the Kings in Diokleia the Great Župans were regents of eastern Serbia, but in the 12th century they became most powerful from Dioklein Kings (see Chapter 1).

⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 48.

presented to the monastery of Hilandar, the seal has the Greek text Σφραγὶς Στεφάνου μεγάλου ζουπάνου τοῦ Νεμάνια ("the seal of Stefan Nemanja, the Great Župan").⁹ The same title was carried until 1217 by his son Stefan Nemanjić, as can be seen in a letter written to Pope Innocent III from 1199 (*Stephanus ... magnus iuppanus totius Servye*)¹⁰ and in a the treaty with Dubrovnik (1214–1217), preserved in both a Serbian and Latin version (Serbian text: *Азъ вѣли жѹпѧнъ Стѣфанъ*; Latin text: *Ego magnus iupanus Stephanus*).¹¹ However, the treaty with Dubrovnik from 1205 was signed by the same ruler simply as ГОСПОДИНЪ СТЕФАНЪ (*Gospodin Stefan*, Lord Stefan).¹²

In 1217, Nemanja's son Stefan got the royal crown from the Pope Honorius the Third, what he expressed in the Žiča chrysobull (1220) and in the charter presented to the monastery of Saint Mary on the island of Mljet (1217–1227). The charter to Saint Mary was signed as "Stefan, by the grace of God crowned King and Autocrat of all Serbian and Maritime Land" (СТЕФАНЪ ПО МИЛОСТИ БОЖИЈИ ВѢЊУАЊНЫ КРАЉ И САМОДРЪЖЦЪ ВСТ҃КЕ СРЋГСКЕ ЗЕМЛЫ И ПОМОРСКИЕ).¹³ However, in the Žiča chrysobull Stefan emphasized the fact that he was, by the grace of God, the first crowned King of all Serbian Land (Сређањ, по Божији миљости вћењуани првви краљ вссе Срѣбескије Земле).¹⁴ After the King's death, the formula "First Crowned King" (*Prvovenčani kralj*) was recognized by his sons and successors Kings Radoslav, Vladislav and Uroš, and later on it became common. For example, King Radoslav, in a treaty with Dubrovnik (4 February 1234), calls himself "the son of the First Crowned King ... Stefan" (сынъ Првовенчанаго крала ... Стѣфана).¹⁵ Confirming privileges to the monastery of Hilandar (22 August 1234–1237) King Vladislav says: "I Stefan Vladislav, with the help of God the King, grandson of Saint Simon, son of the First Crowned King Stefan" (ІА Стѣфанъ Владиславъ, съ помоцију Божијео краљъ, вноукъ светаго Симеона, сынъ Првовенчанаго крала Стѣфана).¹⁶ King Uroš the First, restoring the chrysobull of his father in favour of the monastery

⁹ Čorović, *Spisi Svetog Save*, p. 4.

¹⁰ Solovjev, *Odabrani spomenici*, p. 14.

¹¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 86.

¹² Novaković, *Zakonski spomenici*, p. 136. It is possible that the charter was promulgated by the ex-King Stefan Dragutin 1313–1316 or 1314. See Mošin, Ćirković, and Sindik, *Zbornik*, pp. 453–454.

¹³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 109.

¹⁴ Ibid., p. 91.

¹⁵ The Serbian text of King Stefan Radoslav's treaty with Dubrovnik has the Greek signature Στέφανος ῥήξ ὁ δούκας (ῥήξ = rex), although the King calls himself in the document κράλъ (kral = king). Mošin, Ćirković, and Sindik, *Zbornik*, p. 130.

¹⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 148.

of Saint Peter and Paul on the River Lim (1254–1263), says: “Stefan Uroš, son of the Saint Lord King Stefan, the First Crowned” (Стефанъ Урошъ, синь светаго господина кралла Стефана Пръвовданъчанънаго кралла).¹⁷

The title of “King” was carried by Serbian monarchs until 1346, when Stefan Dušan took the title of “Emperor” (“Tsar”). Though the Serbian Empire did not last very long, it happened that after Dušan’s death two sovereigns carried the title of Tsar: Dušan’s son and legitimate successor Uroš (since 1355) and Dušan’s half-brother Simon-Siniša, lord of Thessaly and Epiros (since 1356).¹⁸ After Uroš’s death (1371) the title of Tsar disappeared from Serbian territory but it survived for two more years (about 1371–1373) in the Byzantine part of the Empire. It seems that the title was carried by Simon’s son John Uroš, who devoted himself very soon to the monastic life, became the monk Ioasaph and one of the founders (*κτίτωρ, κτιτόρъ, ktitor*) of the famous monastery of the Great Meteoron (Μεγάλο Μετέωρον, from Greek μετέωρος, “floating in the air”).¹⁹

After 1371 the title of Serbian monarchs was Knez (knežъ, Prince) or Veliki Knez (the Great Prince), carried by Prince Lazar (until 1389) and his son Stefan Lazarević (until 1402).²⁰ However, as Lazar was pretender on Nemanjić’s herit-

¹⁷ Ibid., p. 227.

¹⁸ Simon’s mother was Byzantine Princess Mary (Maria) Palaiologos, second wife of Serbian King Stefan Dečanski. After Dušan’s death Simon proclaimed himself in 1356 Tsar and ruled separately in Thessaly and Epiros without recognizing the imperial rights of his cousin Uroš. He signed his charters, written in Greek as ΣΥΜΕΩΝ ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΡΩΜΑΙΩΝ ΚΑΙ ΣΕΡΒΕΙΑΣ Ο ΠΑΛΑΙΟΛΟΓΟΣ, or ‘ΡΩΜΑΙΩΝ ΚΑΙ ΣΕΡΒΩΝ, Ο ΠΑΛΑΙΟΛΟΓΟΣ, or ‘ΡΩΜΑΙΩΝ ΚΑΙ ΣΕΡΒΩΝ ΚΑΙ ΠΑΝΤΟΣ ΛΑΒΑΝΟΥ ΟΥΡΕΣΙΩΝ Ο ΠΑΛΑΙΟΛΟΓΟΣ. As can be seen, he called himself sometimes “Tsar of Romans and Serbia”, sometimes as “Tsar of Romans and Serbs”, and once “Tsar of Romans and Serbs and whole Albania”, but he always added the dynastic name of his mother—Palaiologos (Solovjev and Mošin, *Diplomata graeca*, pp. 228, 238, 256).

¹⁹ The *Meteora* is a rock formation in central Greece, hosting one of the largest and most precipitously built complexes of Eastern Orthodox monasteries. The monastery of Great Meteoron is the largest of the monasteries located at *Meteora*, and the main church (*katholikon*, καθολικόν) is consecrated in honour of the Transfiguration of Jesus (Μεταμόρφωσης τοῦ Σωτῆρος).

²⁰ See for example the charter presented to the monastery of Hilandar (1380) or the treaty with Dubrovnik of 1387 (Mladenović, *Povelje kneza Lazara*, pp. 131, 193). The title of Great Prince (Μέγα Κνεζή) could be found in the chancery manual of the Constantinopolitan Patriarchate from 1386. See J. Darouzès, “Ekthesis néa, Manuel des pittakia du xive siècle”, *REB* 27 (1969), p. 60. Cf. I. Đurić, “Ekthesis nea—vizantijski priručnik za ‘Pitakia’ o srpskom patrijarhu i nekim feudalcima krajem xiv veka” [“Ekthesis nea—Byzantine Manuel for ‘Pitakia’ on Serbian Patriarch and Some Feudal Lords at the End of the 14th Century”], *ZFFB* 12.1 (1974), pp. 421–422.

age²¹ he added to his title the formula *самодръжавни господинъ* ("independent Lord") and took the dynastic name Stefan, as well (*СТЕФАН КНЕЗ ЛАЗАРЬ*).²² In August 1402 Lazar's son Stefan got the title of "Despot" from Byzantine co-Emperor John VII Palaiologos, and that title was used till the fall of the Serbian mediaeval State (1459). Usually Stefan Lazarević signed his charters "by the grace of God Despot Stefan Lord of all Serbian Lands" (*МИЛОСТИЮ БОЖИЈЕО ГОСПОДИНЪ ВСЕМЬ СРЬБЛЯМЪ ДЕСПОТЬ СТЕФАНЪ*).²³ From 1459 to 1537, the Hungarian Kings gave the title of "Despot" to the most prominent Serbian noblemen living in Hungary and fighting against the Turks as the King's vassals.²⁴

Besides the monarch's title, the territory that he ruled over was always designated. Territorial formulae had a partly permanent, partly variable content.²⁵ For example, King Stefan the First Crowned signed the treaty with Dubrovnik (c.1220) simply as "Stefan Serbian King" (*СТЕФАНЪ КРАЛЬ СРЬПСКИ*).²⁶ However, in the charter giving some villages to the monastery of Holy Virgin on the island of Mljet (1217–1227), we can find the signature "Stefan by the Grace of God Crowned King and Autocrat of all Serbian and Maritime Land" (*СТЕФАНЪ ПО МИЛОСТИ БОЖИЈИ ВѢЊУЋАЊНЫ КРАЛЬ И САМОДРЪ-*

²¹ His consort Militza (Милица) Nemanjić was the daughter of Prince Vratko Nemanjić (known in Serbian epic poetry as Jug Bogdan), who as a great-grandson of Vukan Nemanjić was part of a minor branch of the Nemanjić dynasty.

²² Mladenović, *Povelje kneza Lazara*, pp. 131, 148–149, 180–181, 192, 203–204. See F. Barišić, "Vladarski čin kneza Lazara" ["Sovereign Title of Prince Lazar"]; V. Mošin, "Samodržavni Stefan knez Lazar i tradicija nemanjičkog suvereniteta od Marice do Kosova" ["Independent Prince Stefan Lazar and the Tradition of Nemanjić's Sovereignty from Maritz to Kosovo"]; B. Ferjančić, "Vladarska ideologija u srpskoj diplomaciji posle propasti Carstva 1371" ["Sovereign Ideology in Serbian Diplomacy after the Fall of Empire 1371"]. These three works were all published in the collection attributed to Prince Lazar (*O knezu Lazaru*) (Belgrade 1975). Cf. R. Mihaljić, Lazar Hrebeljanović, istorija, kult, predanje [Lazar Hrebeljanović, History, Cult, Tradition] (Belgrade 2001). On the dynastic name Stefan (Stephen) see Marjanović-Dušanić, *Vladarska ideologija Nemanjića*, pp. 42–59.

²³ For example, two charters (1 September 1414–31 August 1415 and 20 January 1427) presented to the Great Lavra of Saint Athanasios on Holy Mountain (Mladenović, *Povelje i pisma despota Stefana*, pp. 254, 261). In the foreign documents he was called *dominus despotus Sclyoniae*, *dominus despotus dux (Rassie-Raxie)*, *dominus despotus (regni) Rascie*. See B. Ferjančić, "O despotskim poveljama" ("On Despots' Charters"), *ZRVI* 4 (1956), pp. 89–114.

²⁴ See Ferjančić, *Despoti u Vizantiji i južnoslovenskim zemljama*, pp. 89–114.

²⁵ See Đ. Bubalo, "Teritorijana komponenta kraljevske titule Nemanjića" ["The Territorial Component of the Nemanjić Royal Title"], in *Kraljevstvo i Arhiepiskopija u srpskim i pomorskim zemljama Nemanjića* [The Kingdom and the Archbishopric of the Serbian and Maritime Lands of the Nemanjić Dynasty] (Belgrade 2019), pp. 245–290.

²⁶ Novaković, *Zakonski spomenici*, p. 137; Mošin, Ćirković, and Sindik, *Zbornik*, p. 272.

ЖЫЦЬ ВСЕХ СРЫПСКЕ ЗЕМЛЫ И ПОМОРСКИХ).²⁷ In some documents, issued by the Kings Radoslav and Vladislav, the old name of the State was revived—Raška (*Рашка*, *Rascia* or *Raxia* in Latin documents), derived from the name of the town of Ras (today near Novi Pazar, town on the south of Serbia), the oldest Serbian capital. For example, at the beginning of the treaty with Dubrovnik (4 Febrary 1234), King Radoslav calls himself “King of all Rascian Lands” (кнѧзь всѣх Рашичъ Земль).²⁸ The same formula was used by Radoslav’s brother, King Vladislav, in two treaties with Dubrovnik (September 1234–April 1235) and the charter presented to the monastery of Hilandar (1234–22 August 1237).²⁹ In Serbian legal sources the name of Raška disappeared very soon, but it survived in Papal, Hungarian, Venetian and Ragusan correspondence: they call even Tsar Dušan *rex Rassie* (*Raxie*).³⁰

As Raška was genetically linked with Diokleia, later Zeta (modern Montenegro), that connection was pointed out in the monarch’s title. Already Stefan Nemanja in his charter presented to the monastery of Hilandar (1198) says that he restored his grandfather’s land (И вновиխъ свою дѣдину) and that he conquered “of Maritime Lands Zeta” (ѡд Морске Земле Зетоу).³¹ From that

²⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 109.

²⁸ Ibid., p. 130.

²⁹ Ibid., pp. 134, 138, 148.

³⁰ For example in one of the Papal letters, speaking of Tsar Dušan, we can read: ... *qui se cesarem seu regem Rassie facit communiter nominari*. S. Ljubić, *Listine o odnošajih između Južnoga Slovenstva i Mletačke republike III* [Charters Concerning the Relationship between South Slavs and the Republic of Venice III] (Zagreb 1868–1870), p. 186. Very rarely in some documents written in Latin, we can find the term *Arascia*, instead of *Rascia*. For example in Tsar Dušan’s charter presented to the Republic of Dubrovnik (20 August 1346), asking them to pay 200 perpers to the church of Saint Nicholas in the Italian city of Bari, it was said that the same devotion was expressed by the Tsar’s grandfather, Lord Uroš [Stefan Uroš II Milutin] and his father, lord Stefan [Stefan Uroš III Dečanski], most illustrious ex-Kings of *Arascia* (*Specialis illa devotio, quam erga confessorem mirificum et egregium beatissimum Nicolaum felicis recordationis dominus Vrossius, dominus avus noster, et bone memorie dominus Stephanus, dominus genitor noster, illustrissimi reges condam Arascie, habuerunt et quam nos multomagis habemus*). Ed. S. Ćirković, “Povelja cara Dušana Opštini Dubrovačkoj o isplati 200 perpera godišnje crkvi Svetog Nikole u Bariju”, *ssA* 4 (2005), pp. 88–89. Beside this charter, the name *Arascia* was mentioned in a document, permitting the alienation of some objects from the treasury of the Basilica of Saint Nicholas (1353). The text says that three candelabrum had images of Saint Nicholas, King of *Arascia* and of his seal (*in quibus xmaltis sunt ymagines, S. Nicolai, Regis Arasce et arma dicti Regis*). Ed. F. Nitti de Vito, *Le pergamente di S. Nicola di Bari, periodo Angioino (1343–1381)*, *Codice Barese vol. xviii* (Trani 1950), p. 66. Cf. S. Novaković, *Istorija, tradicija, izabrani radovi* [History, Tradition, Selected Works], edited by S. Ćirković (Belgrade 1982), p. 464, n. 31.

³¹ Ćorović, *Spisi Svetog Save*, p. 1; Mošin, Ćirković, and Sindik, *Zbornik*, p. 68.

time all Nemanja's successors include *Pomorje* (Поморје) or *Pomorske Zemlje* (Поморска Земља)—“Maritime Lands”—in their royal or imperial titles.³²

Since 1343 King Dušan introduced in his title “Greek Lands”, meaning the territories conquered from Byzantium, emphasizing in that way his imperial pretensions. “Greek Lands” were mentioned in four charters written in Old Serbian:

- 1) A charter confirming the chrysobull of his father Stefan Dečanski to the monastery of Dečani, presented between May 1343 and December 1345,³³ was signed “King of all Serbian and Maritime Lands and of Greek and Bulgarian regions” (краљ већех Српских и Поморских Земља и првдѣль Грческих и Българских).³⁴
- 2) A charter to the monastery of Saint Peter and Paul on the River Lim (25 October 1343) used the title “Independent Lord of all Serbian Lands and Maritime and Greek” (самодръжавни господинъ већех Српских земель и Поморских и Грч'ких).³⁵
- 3) A charter to the monastery of Hilandar with the confirmation of the domain of the church of Saint Nicholas in Vranja (1343–1345) has the title “King of all Serbian and Maritime Lands and of a part of the Greek Lands” (краљ већех српскихъ и поморскихъ земља и честынисъ Гркомъ).³⁶
- 4) A charter to the *pyrgos* (tower) of Hilandar in Chroussia from 1 January 1345 used the title “King Autocrator of all Serbian Lands and of a part of the Greek sides” (краљъ, самодръжъцъ већехъ српскихъ земља и честынисъ грческымъ странамъ).³⁷

In the documents written in Latin, the Byzantine Lands (*Romania*) were mentioned for the first time in the charter issued to the Republic of Venice (15 October 1345), where King Dušan calls himself *Bulgarie imperii partis non modice particeps et fere totius Romanie dominus*.³⁸ The territorial formula of “Serbia

³² Novaković, *Zakonski spomenici*, pp. 147, 150, 154, 156, 393, 396, 399, 404, 406, 568, 587, etc.

³³ See M. Blagojević, “Kada je kralj Dušan potvrdio Dečansku hrisovulju” [“When King Dušan Confirmed the Dečani Chrysobull”], *IČ* 16–17 (1970), p. 86.

³⁴ Edited by Milojević, *Dečanske hrisovulje*, p. 137, and Ivić and Grković, *Dečanske hrisovulje*, p. 278.

³⁵ Edited by Ž. Vujošević, *ssa* 3 (2004), p. 48.

³⁶ Edited by S. Marjanović-Dušanić, *ssa* 4 (2005), p. 70.

³⁷ Edited by D. Živojinović, *ssa* 6 (2007), pp. 85–86. In the last two charters Dušan used the expression *čestnik*, derived from the name *čest* (честъ) = part. So, *čestnik* is someone who posses a part of something (see Daničić, *Rječnik iz književnih starina srpskih*, vol. III, p. 463). The formula *čestnik Grkom* or *čestnik grčkim stranam* means that Dušan rules over a part of the Greek (Byzantine) territories.

³⁸ Ljubić, *Listine o odnošajih između Južnoga Slovenstva i Mletačke republike II*, pp. 192–193.

and Romania" was adopted for the first time in King Dušan's charter in favour of the monastery of Saint John the Baptist (*πρόδρομος* = forerunner, precursor) on the mountain Menoikeion (τοῦ Μενοικέως), located east of Serres (October 1345). It was signed: Στέφανος ἐν Χριστῷ τῷ Θεῷ πιστὸς κράλης καὶ αὐτοκράτωρ Σερβίας καὶ Ρωμανίας.³⁹ Later on, after proclamation of the Empire, that became the permanent formula of Dušan's signature on Greek charters, only the title King (*κράλης*) was replaced by Emperor (*βασιλεὺς*). In charters written in Serbian, Dušan is mostly "Tsar of Serbs and Greeks" (Царъ Сръблемъ и Гъркомъ), although in a few cases some other lands were included.

The territorial formula of the monarch's title in mediaeval Serbia had some variable ingredients as well, which sometimes appeared and sometimes disappeared. King Vladislav, for example, mentions in his title beside Rascian (Serbian) Lands, Dioklitia (Диоклитија, Diokleia, modern Montenegro), Dalmatia (Далмација), Trevunie (Тръвуние, region of the city of Trebinje, today in Herzegovina) and Zahumlje (Захумлије, Захлумија, *Zachlumia*, a region on the Adriatic coast between Dubrovnik and the Neretva River).⁴⁰ Trevunie could be found in the title of his brother King Radoslav (Стефанъ въ Христа Бога вѣрны краль всѣхъ Рашкихъ Земль и Тревоунинскиихъ),⁴¹ while Zamumlje, or Hum, was mentioned in King Uroš's charter to the church of Holy Virgin in Ston (c.1252). The King's title has the formula "King and with God Autocrat of all Serbian Lands and Maritime and Hlm" (крадљ и с' Богомъ самодръжци в'се Сръпскые Земле и Поморъскыи и Хълмъскые), while the signature is "Stefan Uroš, by the Grace of God, King of Serbian Land and Maritime and Zahumlje" (Стефанъ оурошъ по милости божији краљ српскихъ Земль и Поморъскыхъ и Захумлије).⁴²

Several documents issued by Emperor Dušan mention "Occidental Sides" (Западније Страни)⁴³ or "all Dys" (всѣмъ Диоу, Greek δύσης = west).⁴⁴ Albania (Албанија) was mentioned in Emperor Dušan's charter, giving the church of Saint Nicholas to Jacob (Ιάκωβος, James), Metropolitan (μητροπολίτης) of Serres

39 Solovjev and Mošin, *Diplomata graeca*, p. 16.

40 Mošin, Ćirković, and Sindik, *Zbornik*, p. 138.

41 Ibid., p. 130 (Treaty with Dubrovnik of 4 February 1234).

42 Mošin, Ćirković, and Sindik, *Zbornik*, p. 198.

43 Charter presented to the monastery of Hilandar regarding the village of Potolino (January–April 1348), edited by Ž. Vujošević, *ssa* 5 (2006), p. 11; first charter to the Russian monastery of Saint Panteleimon on Holy Mountain (12 June 1349), edited by S. Božanić, *ssa* 15 (2016), p. 60.

44 For example two charters to the Kellion of Saint Sabba from Jerusalem in Karea (1348), edited by D. Živojinović, *ssa* 7 (2008), pp. 62 and 74.

(1 September 1352–31 August 1353)⁴⁵ and some documents of his half-brother Simon (Siniša).⁴⁶ Bulgaria was included in Dušan's royal title between May 1343 and December 1345 when he confirmed the Dečani chrysobull of his father Stefan Dečanski (see above). In the charter in favour of the monastery of Saint Archangels in Jerusalem (8 March 1350), Dušan calls himself "Tsar of Serbs, Greeks, Bulgarians, of Despotate and Maritime Lands" (царь Стефанъ Сръблјемъ и Гъркомъ и Българомъ и Деспотатоу и Поморю).⁴⁷

In the famous Gračanitza charter King Milutin adds to his title "Danubian Lands" (краљ... и Подоунавъскихъ Земляхъ),⁴⁸ in Greek documents called Πάραδονυαβίς or Παρίστριον. The "Danubian Lands" were mentioned later in Prince Lazar's charter in favour of Hilandar's hospital issued between 1 September 1379 and 31 August 1380 (АЗЬ ВЪ ХРИСТА БОГА БЛАГОВѢРНІЙ, И САМОДРЪЖАВНІЙ ГОСПОДИНЪ СРЪБЛЈЕМЪ И ПОДОУНАВИУ СТЕФАНЪ КНЕЗЪ ЛАЗАРЪ)⁴⁹ and in the treaty of his son Despot Stefan with Dubrovnik from 2 December 1404 (МИЛОСТІУ БОЖИ ГОСПОДИНЪ ВЪССИИ ЗЕМЛА СРЪБСКОИ И ПОМОРІУ И ПОДОУНАВЪСКИМ СТРАНАМЪ ДЕСПОВЪ СТЕФАНЪ).⁵⁰ After the battle of Velbužd (Βελεβούστδιον, ancient *Pataulia*, modern Küstendil⁵¹ in southern Bulgaria) and the defeat of the Bulgarian army (28 July 1330), King Stefan Dečanski added to his title the territories of Ovče Pole (Εύτζαπολις, called *Neustropolis* by George Akropolites, a district in North Macedonia in the basin of the Upper Vardar) and Velbužd (краљ всеми Сръбъскими земли и Поморъскими и Свѣчепольскими и Велъбууждскими).⁵²

Exceptionally, King Milutin took the title *rex Croatiae*, when Mladen, *Ban* (governor) of Croatia, included in his title the territory of Hum (*Mladen Croa-*

⁴⁵ Edited by G. Bojković, *SSA* 15 (2016), p. 92.

⁴⁶ For example, the second chrysobull to the monastery of Saint George in Zablanteia was signed as "Simon in Christ God believing Emperor and Autocrat of Romans and Serbs and all Albania, Uroš Palaiologos" (ΣΥΜΕΩΝ ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΟΡ ΡΩΜΑΙΟΝ ΚΑΙ ΣΕΡΒΩΝ ΚΑΙ ΠΑΝΤΟΣ ΑΛΒΑΝΟΥ, ΟΥΡΕΣΙΣ Ο ΠΑΛΑΙΟΛΟΓΟΣ). Solovjev and Mošin, *Diplomata graeca*, p. 256.

⁴⁷ Solovjev, *Odarbani spomenici*, p. 149. *Despotate* designates the territories that before belonged to the Despots of Epiros. See Dinić, "Srpska vradarska titula", p. 14.

⁴⁸ Solovjev, *Odarbani spomenici*, p. 105.

⁴⁹ Mladenović, *Povelje kneza Lazara*, p. 131.

⁵⁰ Mladenović, *Povelje i pisma despota Stefana*, p. 44.

⁵¹ Bulgarian Cyrillic Кюстендил.

⁵² Edited by S. Mišić, "Povelja kralja Uroša III Dečanskog manastiru Svetog Nikole Mračkog u Orechovu" ["Charter of King Stefan Uroš III to the Monastery of Saint Nicolas Mrački in Orechovo"], from 9 September 1330, *SSA* 1 (2002), p. 59. The village of Orechovo (Bulgarian Cyrillic Орехово), in the area of Mraka, is situated in the very heart of the Rhodopos mountains (south-central Bulgaria), 60 km southwest of Plovdiv.

torum et Bosne banus, generalisque dominus tocius territorii Chelmensis).⁵³ In Dušan's titles Bosnia (Босна, Босна) was mentioned only once, in a collection of transcripts of Ragusan Cyrillic charters, done by Ragusan copyist Nikša Zviježdić. As the charter was not conserved as the original text, it seems that the copyist Zviježdić interpolated the word Bosna (Босна).⁵⁴

1.2 Functions

As holder of supreme power, the monarch in mediaeval Serbia had numerous functions. The most important were the following.

1.2.1 Legislation

Mediaeval lawyers regarded legislation exclusively as an attribute of Empire. The Emperor himself was the only person who could promulgate legal acts that were called "laws" (*νόμοι, leges, zakoni, законы*); for other legal provisions, by which a national State created law, other terms were used. For example, in France, down to 1789, the legal acts of French Kings were termed *ordonnances*. The terms *leges* and *lois* were used for the provisions of Roman law only, with the exception of those precedents, customs and traditions which formed the basic laws of the Kingdom (*leges fundamentales regni, lois fondamentales du Royaume*). We may observe a similar phenomenon in the Slavonic States within the sphere of influence of Byzantium. In Russia, for example, the legal acts of monarchs (Princes, later Tsars) were called laws (*законы*) only from the beginning of the 18th century. The legal enactments of Russian Princes were called "constitutions" (*ustavi, уставы*), whilst the enactments of the Moscovite Princes were called "edicts" (*ukazi, указы*). The term "laws" (*законы*) was used only for the legal acts of the Byzantine Emperors, called *gradskie zakony blagochestivych carej grecheskikh* (*градские законы благочестивых царей греческих*) in Russian legal sources. The words *gradskie zakony* are a translation of the Greek *νόμοι πολιτικοί*, or the Latin *leges civiles*. In the title of a Byzantine compilation of laws of the 9th century, in use in Bulgaria, we find for the first time the word *zakon* (*законъ*) in a Slavonic text. This is the document well known under the title *Zakon sudnyj ljudem* (*Законъ Судный Людямъ, Court Law for the People*), which has its origin, no doubt, in the *Ecloga* (*Ἐκλογὴ τῶν νόμων*, lit. "Selection of the Laws"), a Byzantine legal collection of 726 or 741. There can be little doubt that *Zakon sudnyj ljudem* was called "law", because

53 Jireček, *Istoriya Srba*, vol. II, p. 14 and n. 86.

54 See Dinić, "Srpska vladarska titula", p. 16. Cf. S. Šarkić, "Vladarske titule u srednjovekovnoj Srbiji" ["Monarch's Titles in Mediaeval Serbia"], *ZRPFNS* 46.2 (2012), pp. 23–35.

it contains provisions of Byzantine law, proper, imperial laws. The Bulgarian Princes did not consider themselves authorised to promulgate laws.⁵⁵

Down to the 14th century, Serbian monarchs promulgated only charters—particular legal rules, regulating the conditions within one particular manor (*vlastelinstvo, властелинство*), the legal position of different categories of inhabitants, or one particular problem. The promulgation of general legal acts, regulating conditions within the whole national territory, was not regarded as an attribute of the monarch, unlike in other mediaeval States. The people created those rules, by the long-term repetition of some customs. The main function of a monarch, besides commanding the army and executing administrative power, was to protect customary law.

Like other mediaeval monarchs, the Nemanjićs considered themselves as the protectors of customary law. On such a case we have a testimony in book VIII, chapter 58 of the *Ragusan Statute*, entitled *De pena vrasde* (29 September 1308). The text of the *Statute* says that among Ragusans (Dubrovčani) and Serbs existed an old custom (*antiqua consuetudo*) of *vražda* (вржда)—payment of 500 *perpers* for murder committed between Ragusans and Serbs. However, when a Ragusan nobleman Marko Lukarević had killed a man who was the subject of the Serbian King, the Ragusan Doge (Venetian *Belleetus Fallerius*, Doge from 1305–1307) wanted to sentence him to death, referring to statutes of former Doges.⁵⁶ Ragusan noblemen, on contrary, insisted on the application of the old custom of *vražda*, and this caused discordance between the Doge and the noblemen. As Dubrovnik was at that time under the supreme power of the Republic of Venice, the dispute was presented to the Venetian Doge, who confirmed the decision of the Ragusan Doge. However, the Ragusans made a great effort in order to maintain good relationships with the Serbian King (Milutin), so they sent a solemn delegation to Venice with the request to keep the old custom of *vražda*. In Venice, Ragusan ambassadors were instructed to demand the Serbian King to introduce such a way of punishment “that would be pleasant to God, men and whole world” (*que Deo et hominibus et toti mundo amabilis est*), meaning that punishing the killer by death. But, if King Milutin rejects the application of *talio* (punishment in the same kind), let the old custom of *vražda* for quarrels between Ragusans and Serbs remain. With such instructions the Republic of Dubrovnik (Ragusa) sent solemn ambassad-

⁵⁵ See T. Taranovski, *Enciklopedija prava* [Encyclopedia of Law] (Belgrade 1923), pp. 439–440, and “Pravo države na zakonodavstvo” [“The Right of the State on Legislation”], in Šišćev *zbornik* (Zagreb 1929), pp. 370–378.

⁵⁶ Liber sextus, i. De homicidiis B (Statutes of 1237–1238): *Quicunque fecerit homicidium, nisi se defendendo, quod plene possit probari, moriatur* (Statut grada Dubrovnika, p. 324).

ors to the Serbian King who put forward a proposal. After having listened to the ambassadors, King Milutin answered that there was no way he would agree to that, because he did not want to spill the blood of his subjects. The only thing he wanted to respect and maintain was the old custom of *vražda*, the custom of his ancestors and his own, on which he was bound by the oath (*quibus auditus dictus dominus rex respondit quod in hoc nullo modo assentiret et quod nolebat spargere sanguinem suorum, sed volebat servare et tenere antiquam consuetudinem vraside predecessorum suorum et suam ... qui hoc eciam firmaverat per sacramentum*). Ragusans, of course, could treat their subjects as they wished, but he [King Milutin] would apply only the old custom of *vražda*.⁵⁷

This attitude towards legislation changed in 1346, when King Dušan proclaimed himself “the true-believing Tsar and Autocrat of the Serbs and Greeks”. Educated as a young man in Constantinople, Dušan knew very well that if his State pretended to become an Empire, it should have, *inter alia*, its own independent legislation. Accordingly he began preparations for his own Law Code immediately after the establishment of the Empire, following the examples of his models, the great Byzantine Emperors and legislators Justinian I, Basil I and Leo VI. In a charter of 1346 in which he announced his legislative programme, he said that the Emperor’s task was to “make the laws that one should have” (закони поставити јакоже подобаљти имети).⁵⁸ These laws were, no doubt, laws of the type the Byzantine Emperors had, namely general legislation for the entire State’s territory. However, from the Byzantine point of view, Dušan’s codification was a usurpation: the Serbian monarch took on himself legislation—a competence that did not belong to him as it was the exclusive attribute of Roman (Byzantine) Emperors. Such an idea can be found in the charter of Despot John Uglješa (1386), regarding the reconciliation between the Constantinopolitan and Serbian Patriarchates. The charter condemns Dušan’s proclamation as Tsar and the fact that he [Dušan] “made his will the main law, not only for human things, but for divine as well” (καὶ νόμον κύριον μὴ ὅτι γε τῶν ἀνθρωπίνων, ἀλλὰ καὶ τῶν θείων πραγμάτων τὸ ἐαυτοῦ τιθείς θέλημα).⁵⁹

1.2.2 Command of the Army

To command the army was a very important duty of the monarch, but as article 129 of the Code says, he could be replaced by *vojvoda* (војвода = duke, commander): “In every army the commanders have authority even as the Tsar

⁵⁷ Edition Bogišić and Jireček, pp. 201–202; *Statut grada Dubrovnika*, pp. 466–468.

⁵⁸ Novaković, *Zakonik*, p. 5; *Zakonik cara Stevana Dušana*, vol. III, p. 430.

⁵⁹ Solovjev and Mošin, *Diplomata graeca*, p. 264.

himself. What they say, let it be obeyed. If any man disobey them in aught, he shall be tried even as though he had disobeyed the Tsar" (*На воисцѣ на вѣсакои да вѣладаю воеводѣ, колико и царь; ꙗо речъ да се чионе; ако ли ихъ кѣо прѣчюе оу чемь. Да юсть този всоужденїе кои и внем'зїи кои бы цара прѣслоушили*).⁶⁰

1.2.3 Judgment

One of King Dragutin's charters, giving privileges to the monastery of Hilandar, says that monastery people can dispute their lawsuits in front of the King or one of King's courtiers obtained by a superior's (*hegoumenos*) demand (*И люде си ѿ светыи цркви, пре кои имаю мегоу собомъ ꙗ да и юсть прѣд, кралемъ или прѣд, юдинъмъ вд, владальцъ двора кралева, кои га испроси игоумъни и братыиа*).⁶¹ This means that a monarch in mediaeval Serbia, before the promulgation of Dušan's Law Code, could judge even in the first instance, but that he could also designate one of his courtiers to replace him. Dušan's Law Code determines precisely the cases when the Tsar acts as a judge. First, it is provided in article 78 for disputes over the Church's land which had become complicated: "let the appeal be to my majesty" (*да оупросе царство мии*). Article 105 says: "Imperial charters which are produced before the judges in any matter, which my Code contradicts, and which the court find invalid shall be brought and submitted to me" (*Книге цареве кои приносе прѣда, соудїе за цио юбо, тере ихъ потвори законикъ царства ми, ꙗо съмъ записаль кою любо книгоу; виезии книзе кои потвори соудъ, тезии книзе да оузмоу соудїе и да ихъ принесъ прѣд царство ми*). However, according to article 171 (from the second part of the Code), if some imperial writ transgress the Code "the judges shall not obey that writ but shall adjudge according to justice" (*соудїе тоузи книгъ да не вѣроуто, тъкъмо да соуде и врьше како ю по правдѣ*). This means that the written Code was made paramount, overriding any special edicts or writs issued by the Tsar occasionally. Finally, article 181 provides: "If there be a big case and they cannot decide it and come to a decision, however great the court may be, let one of the judges come with both the parties before me, the Tsar" (*Алије се веђите велико дѣло, а не оузмо-*

⁶⁰ Burr, "The Code of Stephan Dušan", p. 522; Novaković, *Zakonik*, p. 98; *Zakonik cara Stefana Dušana*, vol. III, p. 134. According to the testimony of Byzantine writer and Emperor John Cantacuzenos, the allied Serbian troops, fighting with him against the legitimate Emperor John V (summer 1342), were under the command of 20 Serbian great lords (*Μετὰ δὲ τοὺς ὀρχους ὁ Κράλιης [Stefan Dušan] τῶν ἐν τέλει τοὺς δινατωτάτους αὐτοῦ συναγαγόν τέσσαρας δύτας πρὸς τοῖς εἴκοσι, τέσσαρας μὲν αὐτοῖς κατεῖχε, τοὺς δὲ εἴκοσι παρεδίδου βασιλεῖ ἄμα τοῖς ὑπὲκείνους στρατιαῖς, ὡς πάντα προθίμως, ἀπερ ἀν καλεύη βασιλεὺς, ποισόντας*). Bonnae II, p. 276. Cf. *VIIINJ* vol. VI, p. 406, n. 147 (comment by B. Ferjančić).

⁶¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 268.

гноу расъдити и расправити кои любо соудъ велись боядѣть; да греде ѿт соуда единъ изъ вѣвма внѣмази пър'цема, прѣд царство ми).⁶² So, the Tsar tried only very important and complicated cases.

1.2.4 Representation of the State in International Relationships

Another function of a monarch was to represent the State in international affairs and to conclude treaties with foreign countries. However, the influence of noblemen, especially the great lords, on foreign policy was very important.⁶³ Even the powerful Tsar Dušan, when concluding in 1349 a treaty with Dubrovnik, said: "My Imperial Majesty agreed with the son of my Imperial Majesty, King Uroš, and my noblemen" (и зговори се царьство ми синомъ царьства ми кралиемъ Урошемъ, и съ властелинъ).⁶⁴

1.3 Revenues

The most important foundation of a monarch's power was his economic might. Like in other mediaeval States, Serbian monarchs had supreme property rights over the whole territory of the State (*dominium eminens*). As the owner of the State territory, the monarch had the right to alienate it: he could give lands as a gift to the Church and noblemen, or sell some parts of the territory. For example, King Dušan sold the peninsula of Pelješac (today in Croatia) to the Republic of Dubrovnik (22 January 1333) for an annual revenue of 500 Venetian perpers, paid on Easter (А вѣхина дѣбрвачка да ми даје на всако годиџе на Великъ дань⁶⁵ .є. сать перперъ виетачциехъ).⁶⁶ The supreme property right brought to the monarch various incomes, which were his exclusive rights, so-called *iura regalia*: rights on mineral wealth, customs, mintage, etc. Besides that, the monarch was in possession of numerous manors that were his hereditary estate.

The spreading of the territory and growing of the economy in mediaeval Serbia at the end of the 13th century increased the monarch's revenues and the wealth of the court. According to the testimony of Byzantine ambassadors, the enrichment of Serbian monarchs seems to have happened very fast. When George Pachymeres (Γεώργιος Παχυμέρης) visited Serbia (1267–1269) in order to

⁶² Burr, "The Code of Stephan Dušan", pp. 213, 517, 533, 534; Novaković, *Zakonik*, pp. 62, 80, 134, 140; *Zakonik cara Stefana Dušana*, vol. III, pp. 120, 128, 148, 152.

⁶³ See Chapter 10, section 4.

⁶⁴ Edited by D. Ječmenica, *ssa* 11 (2012), p. 38.

⁶⁵ Великъ дань, lit. "Great Day", i.e. Easter.

⁶⁶ D. Ječmenica, "Prva stonska povelja kralja Stefana Dušana" ["The First Ston Charter of King Dušan"], *ssa* 9 (2010), p. 32.

negotiate the marriage of Princess Anna (Emperor Michael's VIII daughter) and Prince Milutin (future King), he found there a very primitive and modest way of life "like they were living from hunting and stealing" (ώς ἀποζῆν θήραις καὶ κλέπτοντας). According to his story, King Uroš was very surprised by the splendid escort of a Byzantine Princess. He showed to the Byzantines a young woman, who was wearing worn and ragged clothes, saying: "That's the way we treat our brides".⁶⁷ However, when Theodore Metochites (Θεόδωρος Μετοχίτης) came to King Milutin's court (1299) he saw a completely different scene: the King was dressed splendidly, over-decorated with precious stones, pearls and especially gold. The whole palace (ὁ δόμος) was shining from silk fabric embroidered in gold, and the whole ceremony was, as much as possible, an imitation of "Roman [Byzantine] gentility" (ρωμαιίκῆς εὐγενείας).⁶⁸

The most important sources for the Serbian monarch's revenues are the following.

1.3.1 Income from Mines

Serbian rulers rented out the mines to Ragusans (Dubrovčani), Kotorans or Saxons (*Sasi*, Σάσι), under the condition that they got a rental fee or tenth part from revenues. It was the most important and the most certain source of the monarch's income.

1.3.2 Income from Mintage

Mintage started in Serbia in the middle of the 13th century, but monarchs rented out mintage as well. Such a practice brought many abuses that caused a decline of monetary value. For this reason, some foreign countries, especially the Republic of Venice, took vigorous measures against the Serbian currency.⁶⁹

67 Georges Pachymères, *Relations historiques*, ed. A. Failler (Paris 1984), II, p. 453, line 6. For the bride, Pachymeres used the word νύμφη, which has several meanings: bride, fiancée, daughter-in-law, sister-in-law or young woman in general, the last of which is how the French editor translated it (*jeune femme*). "The bride" was probably King Uroš's daughter-in-law, Hungarian Princess Katherine (Katalin), daughter of King Stephen (István) V, wife of his first son, future King Dragutin. See VIINJ vol. vi, pp. 26–27, nn. 54 and 54a (comment by Lj. Maksimović).

68 Mavrommatis, *La fondation de l'empire serbe*, pp. 103–104; VIINJ vol. vi, p. 112, n. 66 (comment by I. Đurić).

69 The great Italian poet Dante Alighieri wrote in his *Divine Comedy*, *Paradise* xix, 141 (*Divina Commedia, Paradiso*, xix, 141) the following verses: "as also Rascia's prince, who in an ill hour saw Venetia's coin" (*E quel di Rascia che male a visto il conio di Vinegia*). English translation by Courtney Langdon (Cambridge MA 1921). *Rascia*, *Rassa* or *Raxia*, Serbian *Raška*, was the old name for Serbia, used for a long time in Occidental mediaeval countries. So, *quel di Rascia* could be Serbian King Stefan Uroš Milutin (1282–1321), Dante's contempor-

Trying to control the mintage, Tsar Dušan ordered in his Code (article 168): “Goldsmiths may not be in the counties and the land of my Empire, but in the market-towns, where I have ordered dinars to be minted” (Златара оу жЂпах и оу земли царства ми, нигд’ да несть, разв’ оу тръгов’х гд’ юсть поста- вило царство ми, динаре ковати). The other order was in article 170: “Let the goldsmiths be in the towns of my Empire to strike money and for other purposes” (Оу градов’х царства ми да стоје златаре, и да ков’ и ине потр’ббе). Article 169 foresees the case when someone turns a deaf ear to the above-mentioned orders: “And if there be found a goldsmith outside the towns and market-towns of my Empire in any village, that village shall be scattered and the goldsmith branded: and if there be a goldsmith in a town who coins dinars secretly, he shall be branded and the town shall pay such a fine as the Tsar says” (Аще ли се обр’те златару и свећни градову и тръгову царства ми оу којем сељу, да се този село распе, и златар иждене. Ако се обр’те златару оу граду и ков’ динаре тајно, да се златар иждене и градъ да плати гловбу цио рече царь).⁷⁰ It seems that the Tsar’s strict orders were not respected for long. The sources testify that during the reign of Tsar Uroš (Dušan’s son), powerful lords, such as Despot Oliver and Nicholas Altomanović, minted their own money. In the charter presented by Tsar Uroš to *čelnik* (prefect) Musa (15 July 1363), one goldsmith’s village was mentioned (*село златарско Аљково*),⁷¹ which leads us to the conclusion that money was not minted only in towns designated by the Code.

Article VII of the Law of Mines orders that anyone who mints counterfeit money shall be punished by the cutting off of a thumb and a fine of 50 perpers (Законъ є и за динарѣ цио се ковоу оу цеки, тко га палачи или трабосїа да моу се палцъ отсече и да плати гловбe, Н. перпер).⁷²

ary, who by diminishing the value of Serbian money provoked the “monetary scandal” in Bologna in 1305. See V. Ivanišević, *Novčarstvo srednjovekovne Srbije* [Money Trading in Mediaeval Serbia] (Belgrade 2001), pp. 39–41. Cf. S. Šarkić, “Stefan Uroš Milutin—Sveti kralj ili stanovnik Dantevog Pakla” [“Stefan Uroš Milutin—The Sainted King or Dweller of Dante’s Hell”], *ZRPFNS* 37.1–2 (2003), pp. 59–70.

⁷⁰ Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, pp. 133, 134; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

⁷¹ Edited by M. Šuica, *ssa* 2 (2003), p. 144.

⁷² Ed. Radojčić, *Zakon o rudnicima*, p. 52; ed. Marković, *Zakon o rudnicima*, p. 21. For mintage of counterfeit money the Law of Mines uses two verbs: *palačiti* (палачити) and *trabosijati* (трабосјати). The origin of the word *palačiti* is not clear. It may come from the Greek παλάστω = to dirty, to pollute, to spoil. *Trabosijati* is Latin *trabocare* and French *trebucher*, *trebuchier*. Cf. Liber Statutorum civitatis Ragusii, Lib. VIII, cap. LXXXIV (*Statut grada Dubrovnika*, p. 494), entitled *Supra moneta falsa (De grossis contrafactis): Et quicunque trabocaverit de dicta moneta usque* See also Radojčić, *Zakon o rudnicima*, pp. 80 and 84.

1.3.3 Income from Customs

Customs⁷³ were rented to Ragusans too. Custom's fees (duties) were not paid at the borders, but in the market-places where the merchandise was sold.

1.3.4 "Saint Demetrios' Revenue" ("Svetodmitarski dohodak")

This was the income paid by the Ragusans on Saint Demetrios' (Δημήτριος) Day (26 October) for the trade privileges that they had in Serbia. It was mentioned for the first time in King Vladislav's treaty with Dubrovnik (September 1234–April 1235), and it was fixed at 1000 perpers and 50 ells of scarlet cloth (да ти дамо тисъкю перъперъ и петъдесетъ лакътъ сърълата чистога и уръле-нога),⁷⁴ given in two annual instalments (the second at Christmas). The income increased in 1252 to 1200 perpers, and in 1268 it was fixed at 2000 perpers. That amount is confirmed by King Dragutin in his treaty with Dubrovnik from 1281 (и сици двѣ тисъки да даю на Дмитровъ дънь).⁷⁵

1.3.5 "Ston Revenue" ("Stonski dohodak", *Tributum Stagni*)

This was the income paid by the Ragusans from 22 January 1333, when King Dušan sold them the peninsula of Ston (today Pelješac in Croatia) for an annual income of 500 Venetian perpers. The amount had to be paid every year at Easter. However, in 1350 Tsar Dušan gave the so-called "Ston Revenue" to the Serbian monastery of Saint Archangels in Jerusalem.⁷⁶

73 The Serbian word for customs is *tsarina* (carina, царина), originating from the word Tsar (Царь). On the history of customs, see K.M. Ivanović, *Prilozi za istoriju carina u srednjovekovnim srpskim državama* [Contributions for the History of Customs in Mediaeval Serbian States], Spomenik SANU XCVII (Belgrade 1948).

74 Mošin, Ćirković, and Sindik, *Zbornik*, p. 135. Scarlet cloth was used in the state robes of the court and noblemen. The Serbs evidently first heard of it from Italy, as they called it *scrlat*, derived from an Italian word, that in turn was probably derived from Persian *sagalat*. It was originally the name of a heavy cloth, introduced to Europe by the Venetians. Cf. article 119 of the Code: "Merchants who trade in scarlet cloth of better or inferior quality shall travel freely without hindrance in my dominion and sell and buy and trade however commerce may require" (Burr, "The Code of Stephan Dušan", p. 520). An ell was called in Serbia *lakat* (lit. elbow) or *stopa* (lit. foot), and its quantity cannot be surely defined. It seems that it was between 29.4 and 30.4 cm. See S. Ćirković, "Merenje i mere u srednjovekovnoj Srbiji" ["Measuring and Measures in Mediaeval Serbia"], in *Rabotnici, vojnici, duhovnici* [Workers, Soldiers, Clergymen] (Belgrade 1997), pp. 139–144.

75 Mošin, Ćirković, and Sindik, *Zbornik*, p. 266. On the Ragusan's tributes see M. Dinić, "Dubrovački tributi—Mogoriš, Svetodmitarski i Konavoski dohodak, Provižun braće Vlatkovića" ["Ragusan's Tributes—Mogoriš, Saint Demetrios' Revenue, Revenue of Konavli, Provisions of Brothers Vlatković"], *Glas SKA* 158 (1935), pp. 203–257.

76 Solovjev, *Odarbani spomenici*, pp. 149–150. Cf. M. Živojinović, "Svetogorci i Stonski dohodak" ["The Hagiorites and the Tribute of Ston"], *ZRVI* 22 (1983), pp. 165–206.

1.3.6 Land Tax—“Soće”

This was collected from every home and could be paid in money (one perper) or be replaced by one *kabao* of corn (see above, Chapter 5, section 2).

1.3.7 “Acrostic” (*Acrostico*, Ἀκρόστιχον, Акростикъ)

This was the income of 100 perpers paid by the maritime towns Bar and Budva (see Chapter 6, section 2).

1.3.8 Tribute in Mast (*Žirovnina*, Жирољнина)

This was regulated by article 190 of the Code: “and where in the county there is mast, one half of it belongs to the Tsar and one half to the lord on whose estate it is” (И ако се је жоупи жиръ роди, тога жира царъ половина, а томъ властелинъ чија є дръжава половина).⁷⁷ The exaction of a tribute in mast and acorns was an old widespread custom. This tribute is called in Serbia *žirovnina*, from *žir* (жир), an acorn or beech mast. It was known in Byzantium as βαλάνιστρων. We find this word in Slavonic form in the schedule of villages belonging to Hilandar in the župa of Strymon (Στρυμών or Struma in North Macedonia), as *valanistro*, βαλανιστρό (November 1357 or 1372).⁷⁸

1.3.9 Royal (Imperial) Pre-emption of Meat

This is mentioned in a commercial treaty between King Milutin and Dubrovnik (14 September 1302). The text of the document says that no merchant in market-places can sell or buy meat before the King's meat has been sold (развѣ къди се хоке краљево месо продати, да се зарѣчи по в'семъ трѣгъ да не продаду ни кѣпѣю меса до колѣ се краљево продада).⁷⁹ As the monarchs on their manors had huge herds of cattle, pre-emption of meat was an important privilege, which brought large revenues.

1.3.10 Extraordinary Aids (*auxilia*, aide féodale)

This was due to the Tsar from his subjects and defined by article 128 of the Code (see Chapter 4, section 3).

1.3.11 Revenues from the Monarch's Manors

These were collected from the lands that were the King's or Tsar's personal domain (*territorium regale*). We do not know the exact amount of those reven-

⁷⁷ Burr, “The Code of Stephan Dušan”, p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol. III, p. 274.

⁷⁸ Solovjev, *Odarbani spomenici*, p. 164.

⁷⁹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

ues, but indirectly we can come to some conclusions. In the charter presented to the monastery of Hilandar (1348), Tsar Dušan says that he decided to give a tenth part from his annual cattle revenues to the monastery, what figured out at 4000 perpers (и приложи'мо ѿтъ всега добит'ка живога що се находит' оу царь-ствѣ ми ... за четири тисоуцтва кръстат'ихъ перперь).⁸⁰

1.3.12 Income from Fines

These were either in kind (mostly in cattle) or in money, and belonged to the monarch. In connection with this sovereign's right is the name of the tax collector in mediaeval Serbia—*kaznac* (казњиць), from *kazna* (казна) = fine, punishment. The monarch had the right to confiscate the manor of a lord-traitor as well, but any confiscated land was usually given to the Church or to another nobleman.

Besides all the abovementioned revenues, the monarch's wealth increased via numerous privileges, such as: *obrok* or *priselica*, *pozob*, *gradozidanije*, *ponos* and similar (see Chapter 5, 2).

1.4 Relationship with Noblemen

Although the Serbian monarchs were the most powerful people in the State, they were, more or less, dependent on their noblemen. The influence of nobles increased together with the spreading of the territory and economic and political power of mediaeval Serbia. It was also caused by the influence of Byzantium and some Occidental countries.

It seems that at the end of 12th century, the influence of noblemen was not so important. In the hagiography of Saint Sabba, Theodosius says that the noblemen were submissive and obedient (благопокорива, добропослоушливи).⁸¹ King Stefan the First Crowned testifies in his *Life of Saint Simon* that one of Nemanja's lesser lords (*vojnik*, воинъ, literally "soldier") and a nobleman's daughter fell on their knees before the ruler (Пришъдышоу же јединому ѿтъ правовѣрныхъ воинъ юго и поклонъ колѣнѣ свои; ... и припад'ши къ ногама светомоу), wanting to tell him that heretics were present in his State.⁸² However, from the beginning of the 13th century noblemen became more powerful and

⁸⁰ S. Mišić and M. Koprivica, "Opšta hrisovulja cara Stefana Dušana Hilandaru" [“General Chrysobull of Tsar Stefan Dušan to Hilandar Monastery”], SSA 14 (2015), p. 68. The charter calls cattle revenue *živi dobitak*, lit. live gain, live asset. In several legal documents *živi dobitak* is opposed to *mrtvi dobitak*, lit. dead or inanimate gain, i.e. immovable things. For more details see Chapter 12 (Law of Property).

⁸¹ Edited by Daničić, p. 36.

⁸² Edited by Jovanović, pp. 32, 34.

independent. Starting the biography of his father Stefan Nemanja, King Stefan refers to his noblemen as “my friends and brothers” (**љубимици же и братија моя**).⁸³ King Vladislav in the chrysobull to the church of Holy Virgin Bistrička, mentions noblemen beside his relatives.⁸⁴ Archbishop Danilo tells us that King Milutin respected and loved his noblemen and their wifes as his brothers (**и избрање великоменитије своје властели съ женами ихъ иже соѹште юмоу тако възлюблены братија**).⁸⁵ According to John Cantacuzenos, Serbs have an old custom: when a nobleman or great lord (**τις τῶν εὐγενεστέρων καὶ μεγάλα δυνάμενων**) comes after a long time to his ruler (**ἄρχων**) and when he has to greet him for the first time, then both of them dismount from their horses and he who is submissive (**δουλεύντα**) kisses the ruler, first in the bust and after in the mouth. By the second meeting, the submissive one does not dismount any more, but he greets his sovereign lord (**δεσπότης**) riding. This was the way of greeting that Cantacuzenos had seen when he visited Dušan's palace (**οἰκία**).⁸⁶

It seems that Serbian monarchs, before making important decisions, had to consult their noblemen. This is especially testified by Byzantine writers and ambassadors who visited Serbia. Theodore Metochites, for example, complains about King Milutin's noblemen who oppose agreement with Byzantium and who are always ready for war, a permanent source of plunder. All the time Metochites was afraid whether the King would be able to resist the will of his lords.⁸⁷ Nikephoros Gregoras writes that great lords, dukes and commanders (**μεγιστᾶνες καὶ στρατηγοὶ καὶ ταξιαρχοὶ**) stirred Crown Prince (in Serbia so-called “Junior King”) Dušan up, against his father King Stefan Dečanski. When Dušan gave in to their demands, they proclaimed him the supreme King of Serbia (**Κράλην Σερβίας αὐτοκράτορα ἀνηγόρευσαν**). Stefan Dečanski was captured by the same lords, against the will of his son, and soon he died in jail. As Dušan could not resist the powerful lords, he kept silent.⁸⁸ Although Tsar

⁸³ Ibid., p. 18.

⁸⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

⁸⁵ *Životi kraljeva i arhiepiskopa srpskih*, ed. Daničić, p. 96.

⁸⁶ Bonnae II, pp. 261–262; VIINJ, vol. VI, pp. 387–388, n. 103 (comment by B. Ferjančić).

⁸⁷ Metochites uses very strong terms when describing the Serbian noblemen, such as criminals, robbers of graves, slanderers, men who respect nothing, shameless people, etc. Ed. Mavromatis, pp. 114–115; VIINJ, vol. VI, pp. 133–135 (comment by I. Đurić).

⁸⁸ Nic. Gregorae, *Byzantina Historia*, IX, 13, vol. I, pp. 456–457. Cf. VIINJ, vol. VI, pp. 211–212, n. 116 (comment by S. Ćirković). Danilo's continuator testifies on the great influence of Serbian noblemen on young Dušan in his *Life of Stefan Dečanski* (*Životi kraljeva i arhiepiskopa srpskih*, ed. Daničić, pp. 207–212).

Dušan became later “probably the most powerful monarch in Europe”,⁸⁹ he stood all the time under the influence of his lords. According to the story of John Cantacuzenos, the Serbian noblemen told their King (Dušan) not to start a war against the Byzantine Emperor, but only if he first attacks him. If Dušan had started a war in spite of their advice, none of them [noblemen] would have joined him (ήμῶν γὰρ ἀφίξεται οὐδεὶς).⁹⁰ The same writer says that King Dušan took an oath to his great lord Hrelja (Χρέλης), when he became the King's servant again (Κράλης ... ὁρκους παρείχετο αὐτίκα Χρέλη καὶ ὑπεποιεῖτο).⁹¹ The Serbian noblemen advised King Dušan to take John Cantacuzenos' younger son Manuel (Μανουὴλ) as a hostage (... ἀλλ' εἴ τι δέοιτο τῆς αὐτῶν ἐπικουρίας, τὸν νεώτερον τῶν υἱῶν ὁμηρεύσοντα καταλείπειν παρ' αὐτοῖς), as only that way could they be sure that his father John would respect the alliance with the Serbs.⁹² According to Nikephoros Gregoras, John Cantacuzenos wrote in 1343 to his political adversary Alexios Apokavkos (Απόκαυκος), criticizing him because he was trying to win the Serbian King over to his side; Apokavkos was sending precious gifts not only to the King (πρὸς τὸν ἡγεμόνα τῶν Τριβαλλῶν), but also to the queen consort (ἡγεμονίδα σύζυγον) and noblemen who surrounded the monarch (τῶν τοῖς ἡγεμοσι παραδυναστεύοντων Τριβαλλῶν).⁹³

Theodore Methochites and John Cantacuzenos write that the young noblemen (γεννικὴ νεότης, τοὺς νέους τῶν εὐγενεστέρων) at the Serbian court met respectable guests in formal clothing and served as their escort.⁹⁴ Article 51 of Dušan's Law Code starts as follows: “And when a man shall present a son or brother at Court” (И ктo прeдa сyиna [или братa] oу двopь).⁹⁵ Considering the

89 S. Runciman, *Byzantine Civilization* (New York 1994; originally published in 1933), p. 228.

90 Bonnae I, p. 283; *VIINJ*, vol. VI, pp. 331–332, n. 106 (comment by S. Ćirković). Was it the right of so-called *difidatio*—cancellation of vassal's oath? It is hard to say, because we are not sure to what extent Cantacuzenos' text corresponds to the Serbian reality.

91 Bonnae II, p. 275; *VIINJ*, vol. VI, p. 405, n. 142 (comment by B. Ferjančić). Hrelja became Dušan's vassal again in 1342. The oath of a monarch to one of his lords was a result of Occidental influence that penetrated Serbia. The Byzantine concept of Imperial power does not know such a custom. Dušan took an oath to the monastery of Holy Virgin in Likoussada, as well, so called ὡ παρὸν οὕτος ὁρκωμοτικὸς χρυσόβουλος Λόγος τῆς βασιλείας μου (“by oath confirmed chrysobull of My Imperial Majesty”). Solovjev and Mošin, *Diplomata graeca*, p. 158.

92 Bonnae II, p. 290; *VIINJ*, vol. VI, p. 407, n. 149 (comment by B. Ferjančić).

93 Nic. Gregorae, XIII, 8, Bonnae II, pp. 662–663; *VIINJ*, vol. VI, p. 251, n. 85 (comment by B. Ferjančić). Cf. B. Ferjančić, “Stefan Dušan i srpska vlastela u delu Jovana Kantakuzina” [“Stefan Dušan and Serbian Noblemen in the Work of John Cantacuzenos”], *ZRVI* 33 (1994), pp. 177–194.

94 Metochites, ed. Mavromatis, p. 103; Cantacuzenos, Bonnae II, p. 262; *VIINJ*, pp. 110 and 390, n. 107a (comment by B. Ferjančić).

95 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 44.

abovementioned data, could we say that at the Serbian Court there existed a special service of escort, performed by young noblemen?⁹⁶

1.5 “Junior King” (rex iunior, *млади кралъ*, “*mladi Kralj*”)

As an order of succession did not exist in mediaeval Serbia, the institution of “Junior King” (*млади кралъ*, *mladi kralj*, *млади кралъ*, *rex iunior*) was created, who had to be at the same time co-ruler and Crown Prince. The institution penetrated into Serbia under Byzantine and, maybe more, under Hungarian influence. In mediaeval Hungary the “Junior King” was the King’s son, who possessed during his father’s life his own territory, court and administration. He was considered an independent monarch, and so could make wars, conclude peace treaties, give lands as a gift and mint his own money.⁹⁷

The Serbian “Junior King” was mentioned for the first time in 1271 in the peace treaty between Hungarian King Stephen (István) v and Czech King Otokar II. The document says that on the Hungarian side were present, among other relatives, Serbian King Uroš I and his son Stefan (Dragutin), “Junior King” of Serbia (*Bellam, ducem de Machow et de Bozna, fratrem nostrum: Urossium, regem Servie, et Stephanum filium eius, iuniorem regem Servie, generum nostrum*).⁹⁸ As King Uroš was not only defeated but also captured in the war with the Hungarians (1268), he was forced to appoint his elder son Dragutin (son-in-law of Hungarian King Stephen v) as a successor to the throne. However, the Serbian sources give no evidence that Dragutin ruled over his own territory or had the other rights a Hungarian “Junior King” would have had, during his father’s life.

King Milutin was the first Serbian monarch who gave a part of the Kingdom to his son: between 1309 and 1314, his son Stefan Dečanski ruled in Zeta (modern Montenegro) as a regent of his father. However, the Serbian sources do not call him “Junior King”, and it is not certain whether he had the rights of an independent ruler. Some charters attributed to him seem to be forgeries, and there is no firm evidence that he minted his own money. On his court and administration in Zeta we do not know anything for certain.⁹⁹

96 Taranovski, *Istorija*, vol. I, p. 32, suggests that the service on the Court was some kind of school for the young noblemen, where they could learn military and administrative jobs and knight’s manners.

97 B. Homan, *Geschichte des Ungarischen Mittelalters II* (Berlin 1943), p. 177.

98 Jireček, *Istorija I*, p. 183, n. 117.

99 See M. Ivković, “Ustanova ‘mladog kralja’ u srednjovekovnoj Srbiji” [“The Institution of ‘Junior King’ in Mediaeval Serbia”], *IG* 3–4 (1957), pp. 59–79.

According to Serbian documents, it seems that Dušan was the first Serbian Prince who had the full rights of a “Junior King”. The Dečani charter confirms that Dušan was proclaimed as a “Junior King” on the same day that his father Stefan Dečanski was crowned as King, in the presence of the State Council (*И богою́мъ дарованы́мъ вѣнцы́мъ кралиев’ства сръбъскаго вѣнѹань быхъ на кралиев’ство въ јединъ дънь съ богодарованы́мъ сыномъ кралиев’ства ми Стефаномъ ... и съ прѣвѣзлюблены́мъ сыномъ кралиев’ства ми младимъ кралемъ Стефаномъ*).¹⁰⁰ When he became “Junior King”, Dušan was 13 years old. He ruled over Zeta, where his court was mentioned being near the city of Skadar (modern Shkodër in Albania) on the River Drimac.¹⁰¹ During the regency, Dušan appears two times as the army commander of his father: in 1329 against Bosnian heretics, *babuni* or *bogumili* (*И сына своего богою́мъ дарованнаго Стефана нареће да је младыи по нјемъ краљ, и посла њега на везбожније и поганыје бабоуны*),¹⁰² and against Bulgarians in the famous battle of Velbužd (1330).¹⁰³ “Junior King” Dušan had his own standard-bearer (*vexilifer regis iuvenis*) which was the privilege of a King and his co-ruler.¹⁰⁴ We do not know whether Dušan minted his own money, but he had a seal with the inscription *mladi kralj* (“Junior King”), which he continued to use on some documents even when he became King.¹⁰⁵

When Dušan became King (September 1331) he was crowned for the second time at the State Council. As his father did with him, Dušan proclaimed his son Uroš “Junior King”, though he was still under age.¹⁰⁶ According to the Byzantine writer Nikephoros Gregoras, when Dušan proclaimed himself Tsar, he divided the State territory into two parts: Serbian lands, which conferred to his son Uroš, and Roman (Byzantine) lands, which were governed by himself.¹⁰⁷ As Dušan was Tsar, Uroš became *King* (instead of “Junior King”). That is the reason

¹⁰⁰ Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 74.

¹⁰¹ *Životi kraljeva i arhiepiskopa srpskih*, ed. Daničić, p. 209.

¹⁰² Stojanović, *Stari srpski zapisi i natpisi*, vol. I, p. 25.

¹⁰³ *Životi kraljeva i arhiepiskopa srpskih*, ed. Daničić, p. 190.

¹⁰⁴ Cf. Taranovski, *Istorija*, vol. I, pp. 13–14.

¹⁰⁵ Two letters written to the Republic of Dubrovnik (1334 and 1345). Edited by Stojanović, *Stare srpske povelje i pisma*, vol. I, pp. 54 and 56.

¹⁰⁶ As the “Junior King” Uroš (**МЛАДИ КРАЉ ОУРОШЬ**) was mentioned for the first time between summer 1343 and autumn 1345, in King Dušan’s charter presented to the church of Holy Virgin Perivlepta (*Περιβλεπτα*, “celebrated”) in Ohrid. In that moment Uroš could have been 6 or 8 years old. Edited by Solovjev, *Odabrani spomenici*, pp. 128 and 129, and V. Aleksić, “Povelja kralja Stefana Dušana ohridskoj crkvi Bogorodice Perivlepte” [“The Charter of King Dušan for the Church of Virgin Mary Perivlepta in Ohrid”], *SSA* 14 (2015), pp. 25 and 26.

¹⁰⁷ Nicephori Gregore, *Byzantina Historia* xv, 1, vol. II, p. 747. For more details on this division see Chapter 8.

why the great treaty with Dubrovnik from 1349 mentions the “Tsar’s and King’s lands” (по землји царства ми и краљеве), the “Tsar’s and King’s market-places” (по трговеђу царства ми и краљеве), and the “Tsar’s and King’s nobleman” (ни властелинъ царства ми, ни краљевъ властелинъ).¹⁰⁸ However, the division between Dušan as Tsar and Uroš as King existed only on paper. It was Dušan who ruled in practice, cherishing the traditions of the Kingdom and emphasizing the saintly origin of the Nemanjić dynasty. That could be clearly seen from article 136 of the Code: “My Imperial writ may not be disobeyed, to whomsoever it be sent, be it to the Lady Tsaritsa, or to the King, or to the lords, great or small, or to any man. No man shall disobey what is written in my writ” (Книга царства ми да се не првеша гдје приходи; или къ господи царици, или къ краљу, или къ властеломъ великомъ и маломъ и въсакомъ чловеку, никто да не првчио що пише книга царства ми).¹⁰⁹

Uroš was the only Tsar until 1356, when he appointed his great lord Vukašin (Вукашин) as a co-ruler. Vukašin minted money using the title of King¹¹⁰ and signed his charters as “the true-believing King Vukašin of Serbs and Greeks” (КРАЉ ВЉКАШИН БЛАГОСЕРНЫ СРЂЕСЛЯМ И ГРЫКОМЬ).¹¹¹ Vukašin’s son Marc (Marko, Марко) was the last person in Serbian history to be mentioned as a “Junior King”, but on his rights we know practically nothing.¹¹²

2 Court Dignitaries

2.1 Before the Twelfth Century

According to the information of Constantine VII Porphyrogennetos and the so-called *Annals of the Priest from Diokleia*, the administrative system in the oldest Serbian lands consisted of the ruler—*knez* (*comes*)—and the most prominent representatives of the tribal aristocracy—*župans* (*comes, iupanus*)—who were the heads of the larger groups of tribesmen and territories, the so-called *župas*, over which they ruled. As far as it has been possible to ascertain, such condi-

¹⁰⁸ Edited by D. Ječmenica, *ssA* 11 (2012), pp. 38–40.

¹⁰⁹ Burr, “The Code of Stephan Dušan”, p. 524; Novaković, *Zakonik*, p. 103; *Zakonik cara Stefana Dušana*, vol. III, p. 136. Cf. S. Ćirković, “Kralj u Dušanovom zakoniku”.

¹¹⁰ On the other side, the coins had the inscription *Urosius imperator*, which meant that Vukašin recognized Tsar Uroš as his sovereign lord.

¹¹¹ Charter to his nobleman Novak Mrasorović from January 1366, edited by S. Ćirković, *ssA* 1 (2002), p. 101.

¹¹² Mention of Marko as a “Junior King” was discovered in an inscription of one church in Prizren. See M. Ivanović, “Natpis mladog kralja Marka sa crkve sv. Nedelje u Prizrenu” [“The Inscription from the Church of Holy Sunday in Prizren”], *Zograf* 2 (1967), pp. 20–21.

tions prevailed during the 9th and 10th centuries. During the following century, there was an evident tendency towards the strengthening of the ruler's authority, first in the Serbian maritime lands. It was confirmed by the fact that the King of Diokleia and Dalmatia Michael (Mihajlo, Михајло) received the royal crown from Rome (c.1077). His State included the old Serbian territories along the Adriatic coast (*Primorje, Приморје*): *Dioclea, Travunia* and *Hum*. Later on *Bosnia* and *Rascia* were included within the territories of the State. At that time, besides *župans*, in *župas* (counties) there emerged their assistants—*satniks* (*centuriones*), officers commanding 100 soldiers (from the Old Slavonic word **сѧтъ**, *sat, cam*—hundred). According to their decisions, the rulers dispatched *satnics* to carry out various administrative duties including some outside the *župas* in which they lived.¹¹³ Simultaneously, while ruling the State the ruler was assisted by his closest relatives, who shared the power over the State with him. Usually, these were the monarch's brothers and uncles who ruled over individual parts of the State territories in the capacity of *udeoni kneževi* ("territorial lords"). Such a State, called *udeona kneževina* (*shared principality*), often contained several neighbouring *župas* headed by their *župans* and *satniks*.¹¹⁴

2.2 1180–1340

Contrary to the previous period, during the last quarter of the 12th century up to 1340, Serbia underwent intensive economic growth, together with a development of social relations, the rise of culture, and increased political activities. The period was also marked by a swift development of authentic State administration, following by the elimination of competencies and the establishment of numerous new positions and titles.

The general name used for court dignitaries was *vladalci dvora kraljeva* (вла́далци двора краљева),¹¹⁵ but among the bearers of new titles the most prominent place within the central administration was held by the *kaznac* (казњиць,

¹¹³ See M. Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama* [Administration in Serbian Medieval Lands] (Belgrade 1977), pp. 5–12. Cf. G. Tomović, "Župan", in *LSSV*, pp. 197–198, and R. Mihaljić, *Vladarske titule oblasnih gospodara* [Monarch Titles of Mighty Lords] *Sabrana dela, knjiga II* (Complete Works, Book II) (Belgrade 2001), pp. 77–87.

¹¹⁴ See M. Blagojević, "Srpske udeone kneževine" ["Shared Principality in Serbia"], *ZRVI* 36 (1997), pp. 45–62.

¹¹⁵ The expression was used for the first time in King Dragutin's charter to the monastery of Hilandar, between 1276 and 1281 (Mošin, Ćirković, and Sindik, *Zbornik*, p. 268). The word *vladalc* comes from the verb *vladati* = to rule. In modern Serbian the word *vladalač* means "ruler, monarch", but in mediaeval terminology *vladalc* meant someone who executed the monarch's will. So, the formula *vladalci dvora kraljeva* means "King's court servants".

camerarius, tax collector) and *tepčija* (тепчија, land official). Their common duty was to take care of the total property of the State, each of them having his own competence. The *kaznac* (from *kazna* = fine, punishment) or *veliki kaznac* (*comes camerarius*) of the Serbian King was supposed to collect all income that belonged to the monarch. He accomplished that either personally or through his assistants. Such a conclusion is based on the information given by the Statute of Budva, which says that the Serbian *kaznac* came once a year in the town to collect the tax called *acrostico*.¹¹⁶ The first *kaznac* that the sources mention by name was Grdomil (*casnecius Gerdomil*): in the year 1189 he was still in the service of Princess (*comitissa*) Desislava, widow of Mihajlo, Great Prince from Diokleia (*magni comitis Michaelis uxor*).¹¹⁷

The *tepčija* or *veliki tepčija* ("great land official") was charged with the land property that belonged to the ruler or to the State. For this very reason, he was regularly present whenever the ruler granted part of his domain either to some ecclesiastical institution or to members of the Serbian noblemen (*vlastela*). The *tepčija*'s duty was to ascertain the borders between the ruler's and other's estates. The first *veliki tepčija* (*great tepčija*) we know by his name was Obrad (Обрађ),¹¹⁸ who was on duty during the reign of King Vladislav (1234–1243).¹¹⁹

Until the middle of the 13th century, the ruler's close relatives, *udeoni knezovi* (territorial lords), assisted in carrying out the duties of the State. In their principalities there existed an autonomous administration organized in a similar way to that of the ruler. Each of the territorial lords (*udeoni knezovi*) had on his territory his *kaznac* and *tepčija* who enjoyed the same authority as the monarch's *great kaznac* or *great tepčija*. The only difference was that their authority was limited to the respective territory.¹²⁰

¹¹⁶ Statute of Budva, Cap. 1, ed. Luketić and Bujuklić, pp. 16 and 92.

¹¹⁷ Solovjev, *Odabrani spomenici*, p. 5. In the charter presented by Devesius, lord of Konavli (today in Croatia, near Dubrovnik) to his daughter Dragoslava and his son-in-law Mikac (c.1148), *Utalez casinicus* was mentioned (ibid., p. 1). However, very probably the document was forgery. Cf. Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 17–24.

¹¹⁸ Oath of King Vladislav to the city of Split from 23 June 1237 (Mošin, Ćirković, and Sindik, *Zbornik*, p. 145).

¹¹⁹ S. Novaković, "Vizantijski činovi i titule u srpskim zemljama XI–XV veka" ["Byzantine Ranks and Titles in Serbian Lands from the 11th to 15th Centuries"], *Glas SANU* 78 (1908), p. 201; M. Blagojević, "Tepčije u srednjovekovnoj Srbiji, Bosni i Hrvatskoj" ["Tepčijas in Mediaeval Serbia, Bosnia and Croatia"], *IG* 1–2 (1976), pp. 7–47, especially p. 24. On *tepčija* see also L. Margetić, "Značenje i porijeklo riječi tepčija i dad" ["Meaning and Origin of the Words *Tepčija* and *Dad*"], *ZRVI* 17 (1976), pp. 55–64.

¹²⁰ The existence of a few categories of *kaznacs* and *tepčijas* is confirmed by the Dečani charter. Quoting his dignitaries who were present when the monastery was founded, the

During the entire year, in the royal palace there lived a great number of noblemen. Their number was gradually increased since the territory of the State was also substantially enlarged. In order to entertain all close royal advisors, guests and others, it was necessary to provide large quantities of food and drink. Two separate royal services were established for this task: one of them provided and served beverages at the court while the other supplied, prepared and served food provisions. A prominent courtier in charge of drinks had the title of *sluga* (ελογγα, ελδρα),¹²¹ or *great sluga* (*regalis pincerna*, wine servant, or πιγχέρης from the Byzantine court), while the one in charge of food was called *stavilac* (ставилац, table servant). The duties of the *sluga* included the services of the principal wine servant, while those of the *stavilac* included the services of the chief of the table, corresponding to the Byzantine ὁ δομέστικος τῆς τραπέζης and ἐπὶ τῆς τραπέζης. The first *stavilac* that we know by his name was Đuraš Vrančić, a contemporary of King Milutin and probably the founder of the powerful family Đurašević from Zeta.¹²² However, these were not their only duties, but were rather honorary in nature.

The Byzantine writer George Pachymeres says that Serbian King Uroš sent his *mesazon* (μεσάζων) George (Γεώργιος, Đorđe, Đorđe) to meet the Byzantine embassy, travelling to his court.¹²³ As Pachymeres did not know the Serbian court hierarchy precisely, he gave to George the rank of *mesazon* (the Emperor's confidant entrusted with administration of the Empire),¹²⁴ thinking that George's dignity was equivalent to the Byzantine *mesazon*. However, as far as we know the rank of *mesazon* did not exist in mediaeval Serbia. George

King uses the plural form: **казњиље и теп'чије** ("kaznacs and tepčijas"). Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 137.

¹²¹ *Sluga* means any servant, but in the Serbian court it was a very prominent title. The most powerful noblemen held it, such as Branko, founder of the Branković dynasty, Pribac, Prince Lazar's father, and the very well-known Despot John Oliver. On Branko, see M. Spremić, *Despot Durad Branković i njegovo doba* [Despot Đurad Branković and his Epoch] (Belgrade 1994), p. 17. On Pribac, see Mihaljić, *Lazar Hrebeljanović, istorija, kult, predanje*, pp. 13–20 = *Complete Works, Book II*, pp. 15–20. On John Oliver see B. Ferjančić, *Despoti u Vizantiji i južnoslovenskim zemljama*, p. 160. See also R. Mihaljić, "Sluga", in *LSSV*, pp. 674–675.

¹²² On *stavilac*, see R. Mihaljić, "Stavilac", *IČ* 23 (1976), pp. 5–21.

¹²³ G. Pachymeres, Bonnae I, pp. 474, 12; éd. Failler, II, p. 455.

¹²⁴ On the duty of *mezason* in the Byzantine Empire, see J. Verpeaux, "Contribution à l'étude de l'administration byzantine: ὁ μεσάζων", *Byzantinoslavica* 16 (1955), pp. 270–296; H.G. Beck, "Der byzantinische Ministerpräsident", *BZ* 48 (1955), pp. 309–338; R.J. Loenertz, "Le chancelier impérial à Byzance au XIV et au XVII siècle", *Orientalia christiana periodica* 26 (1960), pp. 275–300; L.P. Raybaud, *Le gouvernement et l'administration centrale de l'Empire Byzantin sous les premiers Paléologues (1258–1354)* (Paris 1968), pp. 202–206.

was certainly one of the most prominent lords of King Uroš's court, and he had authority to negotiate with the Byzantine embassy, but it is impossible to say what exactly his title was.¹²⁵

Later on (1299) the same George¹²⁶ was mentioned by Theodore Methochites as the initiator of negotiations for King Milutin's marriage with Byzantine Princess Simonis (Σιμωνίς, Симонида). Methochites says that George enjoys the King's greatest confidence and that he got a title of "second *hegemon* in the national army" (ῆγεμῶν ἐν τοῖς τοῦ γένους στρατευμάσι δεύτερος).¹²⁷ The rank of *second hegemon* did not exist in Serbia either, but this title could designate either a great duke (*veliki vojvoda*, велики војвода), a military commander in the absence of the King,¹²⁸ or a great lord with a standard (велики властѣлинь стегоноша, *veliki vlastelin stegonoša, vexilifer*),¹²⁹ mentioned later by article 155 of the Dušan's Law Code.¹³⁰

2.3 King Dušan's Administrative Reform (1340)

The largest reform of the administration was carried out in 1340, during the rule of King Stefan Dušan. The aim of the reform was to provide for a more successful division of responsibilities in order to achieve greater efficiency and professionalism. To accomplish this task, new titles and positions were introduced, mostly as a result of Byzantine influence and the teaching of the Christian Church about the high origins of imperial authority. These titles were: *logothet* or *great logothet* (*notarius domini regis* or *cancellarius*, chancellor), *protovestijar* (*comes camerarius*, chamberlain), *great čelnik* (*comes palatinus*), and *dvorodržica* (marshal of the court), while on the local level a new title was *kephalia* (*capitaneus*).

¹²⁵ VIINJ, vol. vi, p. 28, note 56 (Lj. Maksimović).

¹²⁶ It seems that George was an able diplomat. As we have seen, he negotiated with the Byzantines in the name of King Uroš (1267–1269). The sources mention a certain *comes Georgius* who was in 1273 and 1281 ambassador of the Serbian King in Italy. This is probably the same person. See L. Thallóczy, C. Jireček, and E. Sufflay, *Acta et diplomata res Albaniae mediae aetatis illustrantia I–II* (Vienna 1913–1918), I, no. 264 (nota), no. 470 (nota).

¹²⁷ Ed. Mavromatis, pp. 106–107; VIINJ, vol. vi, p. 119.

¹²⁸ The opinion of I. Đurić, in VIINJ, vol. vi, p. 119, n. 76.

¹²⁹ Blagojević, *Družava uprava u srpskim srednjovekovnim zemljama*, p. 37, n. 32, says that a *second hegemon* cannot be a great duke (*veliki vojvoda*), as I. Đurić considered. According to Blagojević, a great duke commands the army in movement, when the King is absent. As George was present at King Milutin's court all the time, negotiating with Methochites, he could not be a great duke, but a great lord with a standard.

¹³⁰ Burr, "The Code of Stephan Dušan", p. 529; Novaković, *Zakonik*, p. 122; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

The *logothet* or *logofet* (from the Greek λογοθέτης) corresponds to the royal Chancellor in Occidental States. The title was taken from Byzantium. Byzantine sources mention five different sorts of logothetes: a) τῶν ἀγελῶν, supervisor of the State herds of horses and mules; b) τῶν ὑδατῶν, literally “logothetes of the waters”, an obscure functionary mentioned only once; c) τοῦ δρόμου, who was in charge of the public post, δρόμος = lit. “course”, Latin *cursus publicus*, the system of imperial post and transportation; d) τοῦ πραιτωρίου, coadjutor of the Eparch of the city; and e) τοῦ στρατιωτικοῦ, a high-ranking official who controlled exemptions and the reimposition of taxes on the households of soldiers. The title could only belong to educated persons from the ranks of the higher nobility. The *logothet* (logothetes) had to be familiar with diplomacy, legislation and organization of the Church and religion. According to article 134 of the Code “when the Tsar grants a hereditary estate, let him to whom a village is given pay the logofet 30 perpers for the charter: but to whom a county is given, for each village 30 perpers and 6 to the clerk¹³¹ for the writing” (И ѿ записѹи царь башии; комъ запише село да ѿсть логофетъ, л, перьперь за христо-вѣль; а комъ жѣпѣ ѿдь вѣсакога села, л, перьперь, а дїакъ за писанїе, л, перь-перь).¹³² Article 25 orders: “And the Lord Tsar and the Patriarch and the logofet shall govern the churches and none other” (Црквами да ѿбладда господинъ царь, и патріархъ и логофетъ, а инь никто).¹³³ This means that the logothet's prerogatives were to execute legal duties in cases when one Church institution with its property was subjected to another Church institution. Also, he was an executor when a respective Church institution was given property and rights of immunity. It seems that the first logothet we know by name was Raiko, in the service of King Stefan Dečanski between 1325 and 1327. However, we cannot find in any documents the title of logothet written together with his name.¹³⁴ The first person for whom we are absolutely sure that they carried the title of logothet (until 1337) was Joanikie (Іѡанікіе, Ioannikios, Ιωανίκιος), later Serbian Archbishop and the first Patriarch.¹³⁵

The title of *protovestijar* (протовестијаръ, πρωτοβεστιάριος, keeper of the Emperor's wardrobe, successor to the *comes sacrae vestis*) had been very respectable in the Byzantine Empire, and as such was granted only to the Emperor's

¹³¹ The word for clerk is *dijak* (дїакъ), from the Greek διάκονος, “servant”, whence the English word “deacon”.

¹³² Burr, “The Code of Stephan Dušan”, p. 523; Novaković, *Zakonik*, p. 102; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

¹³³ Burr, “The Code of Stephan Dušan”, p. 203; Novaković, *Zakonik*, p. 26; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

¹³⁴ See Stojanović, *Stare srpske povelje i pisma*, vol. I, 1, pp. 40, 41.

¹³⁵ Blagojević, *Dрžавна управа у српским средњовековним земљама*, pp. 167–185.

nephews. In Serbia the *protovestijar* (*protovestiarios*) carried out fiscal policy rigorously in order to provide both the ruler and the State with larger and more stable incomes. At the same time, the *protovestijar* had to ensure a more liberal exchange of goods. To accomplish this, he had to prevent the introduction of new customs duties and the establishment of customs offices in locations where they had not existed before. When a new customs office was opened the *protovestijar* was authorised either to close it or to keep it running. The *protovestijar* was also authorised to participate in the process of account balancing between the monarch and his creditors and debtors. The title was mentioned for the first time in the King Uroš's chrysobull to the monastery of Holy Virgin in Ston (c.1252). The text says that the borders of the village of Osolnik (near Dubrovnik, today in Croatia) were designated by Prince Stefan, together with the priests Spyridon and Methodios, and with the *protobistar* (*protovestijar*) Vratimir (Село Јоаниса оу Примори с мегами како је ут прѣди било, како си Стѣфанъ кнезъ утгесаль с пискоупомъ Спирідономъ и с пискоупомъ Методијемъ, и съ Вратимиромъ с протобистаремъ, такожи да си Стоноу оутвръждено).¹³⁶ Before the reign of King Dušan the title of *protovestijar* was mentioned two times,¹³⁷ but on their competencies we cannot say anything precisely. The administration of the ruler's finances became larger and even more complex during the reign of Stefan Dušan, who also entrusted his financial affairs to the well-known nobleman from Kotor Nikola Buća. His title was, according to the Latin sources, *comes camerarius*. Since Stefan Dušan became Tsar, the dignity of his royal chamberlain was raised to the higher rank. Namely, he assumed the title and the position of the *Tsar's protovestijar*.¹³⁸

The title of *čelnik* (челник) was of domestic, not of Byzantine origin. Therefore it was sometimes used in a colloquial sense, implying a meaning of *head* or *chief* (Serbian *čelo*, чело = forehead, front) without a more precise definition. As far as has been possible to ascertain, at the lowest level of all kinds of *čelniks*, there were the heads and shepherd guides in the service of the prominent feudal families or rulers. The *čelniks* that performed the duties of grooms were close to this category. By their social position they belonged to the cat-

¹³⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 196.

¹³⁷ The second time was by King Vladislav II, son and successor of King Dragutin, who mentioned in 1323 *protobistrial Jurech* as one of the sureties on a payment receipt issued to a certain Kliment Gučetić (T. Smičiklas, *Diplomatički zbornik Kraljevine Hrvatske, Dalmacije i Slavonije*, vol. IX (Zagreb 1911), pp. 146, 147). In the monastery of Dobrun (c.1343) we can find the portrait of *Stan protovistar*, but on his personality we know practically nothing. See Z. Kajmanović, *Zidno slikarstvo u Bosni i Hercegovini* [Wall Painting in Bosnia and Herzegovina] (Sarajevo 1971), pp. 101–110.

¹³⁸ See Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 186–203.

egory of lesser lords (*vlasteličići*). The great church or monastery estates had as their *čelniks* people coming from the nobility. Their basic duty was to provide the protection for all goods on the manor, to defend the monastery by arms and to command a military unit. The *čelniks* played a more complex role in the individual episcopacies and metropolitans. They were expected to be familiar with agrarian relations and existing legal acts, and to issue documents on legal transfers.

The *čelniks* had to perform more complex duties in the State administration or at the ruler's court. As the representatives of administration, the *čelniks* emerged later than the *kaznacs* and *tepčijas*. It seems that from the beginning they were in charge of the ruler's personal security. The Serbian Kings often used the services of the representatives of the administration, especially when it was necessary to separate the Church from the lay estates. For the realization of this kind of duties, the *čelniks* were very convenient officials. They acted on behalf of the ruler and they could use military power. At the time of Tsar Stefan Dušan, they had appeared as military commanders of the most important fortresses that were under the immediate authority of the Serbian King or Tsar. At the royal court, the *čelnik* was also in charge of a part of the court personnel. He also took care of the protection of the ruler himself and his property, while simultaneously, on behalf of the ruler, giving the necessary protection to the Church estates. These, as well as other prerogatives, contributed to the greatest degree that *čelniks* became more important and almost completely extinguished the *tepčijas* from the central administration. Obviously, there was no reason for two institutions to carry out the same duties.¹³⁹

As far as can be established, the first *čelnik* in the service of the Serbian Kings was mentioned in a Ragusan document of 11 August 1284. When King Milutin got married to the Bulgarian Princess Anna (Анъна), the Ragusans decided to give a present of 400 perpers to the King and at the same time to give a present to his *čelnik* Gradislav, valued at 26 perpers (*Gradislauo, celnico suo, donati fuerunt yperperi xxvi*).¹⁴⁰

The management of different duties and tasks at the smaller courts was entrusted to a person who had the title of *dvorodržica* (двородръжица, παλατοφύλαξ from Byzantine court), that is, the head of the royal household or "marshal of the court" (Serbian *dvor* = court, house, and *držati* = to hold). This

¹³⁹ Ibid., pp. 208–245.

¹⁴⁰ *Istoriski spomenici dubrovačkog arhiva, serija treća, sveska 1* (*Monumenta historica archivi Ragusini, series tertia, fasciculus 1*), *Kancelariski i notariski spisi 1278–1301* (*Acta cancellariae et notariae annorum 1278–1301*), collected and edited by G. Čremošnik (Belgrade 1932), p. 122, no. 354.

service was more concerned with the court and the personality of the ruler and less with State affairs. According to the values of the feudal society, the *dvorodržica* was expected to be “loyal till the end” (*veram mu do kraja*) to his lord. In return for his loyalty, he enjoyed the respect and friendly benevolence of the ruler. He was primarily involved in taking care of all persons at the court and in the immediate ruler’s service. When the *dvorodržica* appeared in the role of a member of the State government, he had the right to issue “orders” throughout the country. It seems that his orders pertained to the execution of certain duties and obligations towards the ruler. The construction of a ruler’s “house” or “court” was such an obligation. It also included transportation of the ruler’s personal belongings and certain services when hunting, either with hounds or falcons (гερεκάρχετβο). Finally, it included the provision of the “meals” (ωβροκύ) for the monarch and his escort and the preparation of their lodgings.¹⁴¹

The oldest mention of a *dvorodržica* might be found in the charter of Alexander (Αλέξανδρος), lord of Kanina and Valona (modern Kavajë and Vlorë in Albania), presented to the Ragusans on 2 September 1368. At the end of the document, Alexander says that the charter was issued with the oath of the most prominent lords (Δεὸντεις κοινοῖς πρισγενώμενο), all mentioned by their names. Among them we find *dvorodržica Raice* (и раничे двородръжица).¹⁴²

The professionalization of individual services was evident in the central as well in the local administration. In the later case it occurred with the introduction of the title and position of *kephale* (κεφαλία, κεπαλία, ἡ κεφαλή, ὁ κεφαλατικεύων, *capitaneus*). The title was of Byzantine origin,¹⁴³ and within the structure of the Serbian State did not change its essence. It is quite obvious that the *kephales* had existed in all parts of the State, especially in those that Kings Milutin, Stefan Dečanski and Stefan Dušan took from the Byzantine Empire. Before the conquest of these parts, the abovementioned dignitaries, as imperial plenipotentiaries and high officials, had performed duties as administrators of these provinces. Depending on the size of the territories over which they ruled, they were known as *general* or *local kephales* (χαθόλικῶς ἡ μερικῶς). The former had administrated over certain historic regions, such as Thessaly, or over a group of several administrative units; the latter had administrated over strictly limitited territories consisting of one or two towns. The inclusions of the Byzantine territories within the authority of the Serbian Kings and Emperors led

¹⁴¹ See R. Mihaljić, “Dvorodržica”, in *LSSV*, pp. 142–143.

¹⁴² Stojanović, *Stare srpske povelje i pisma*, vol. I, 1, p. 115.

¹⁴³ On the duty of the *kephale* during the last two centuries of Byzantine history, see Lj. Maksimović, *The Byzantine Provincial Administration under the Palaiologoi* (Amsterdam 1988), pp. 117–166.

to the adoption of the Byzantine system of local administration. The only difference was that the Serbian rulers appointed their people as the heads of their administrations. *Kephale* Raiko had performed his duty in Trilisios and Brontos (in Greece),¹⁴⁴ *kephale* Vladoje in Polog (in North Macedonia),¹⁴⁵ and *kephale* Miloš in Prilep (in North Macedonia) (А томоу мијостникъ Милошъ кефалиа притврьски).¹⁴⁶ A similar practice was evident in other areas south of Skopje as well. It seems that during the rule of King Milutin, the *general kephales* were first introduced in the Skopje region and Zeta (modern Montenegro),¹⁴⁷ while the introduction of the *local kephales* came later.

Before the first part of Tsar Dušan's Law Code was promulgated (1349), the institution of the *local kephales* had been spread throughout the Serbian State. The sources mention the existence of this duty in Štip (1332 and 6 May 1336), Orehovo, county (*župa*) of Mraka (1339), Vranje (1343–1345), Ohrid (1343–1345) and Hvostno (1348).¹⁴⁸ Thus, the Code only legalized and sanctioned its existence.

¹⁴⁴ King Dušan's Greek *prostagma* presented to Raiko (September–December 1345) begins as follows: "Οἰχεῖτέ μου Πάτικο, κεφαλὴν Τριλισίου καὶ Βροντοῦς" ("O, my courtier Raiko, *kephale* of Trilisios and Brontos"). See Solovjev and Mošin, *Diplomata graeca*, p. 24.

¹⁴⁵ The name is mentioned in the list of the estate of the Holy Virgin monastery in Htetovo, done around 1343 (издаде Владоје кефалија полошки). Edited by Slaveva, Miljković-Pepak, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, pp. 294–295. According to Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, p. 252, n. 31, Vladoje had, perhaps, the rank of *general kephale*. However, in Serbia not a single *general kephale* is known by name (See Maksimović, *The Byzantine Provincial Administration*, p. 136, n. 124).

¹⁴⁶ King Vukašin's charter from January 1366, confirming the gift of his nobleman Novak Mrasorović to the Russian monastery of Saint Pantheleimon on Holy Mountain. *ssa* 1 (2002), p. 101.

¹⁴⁷ King Milutin's charter (c.1300) confirming the gift of his father Stefan Dečanski, who gave the cell of Saint Petka (Paraskeve) in Tmorane to the monastery of Hilandar, says that the "city *kephale* [kephale of Skopje] has no competencies there [on the monastery of Hilandar's manors]" (И кефалија градъскын да не има власти тамо). Mošin, Ćirković, and Sindik, *Zbornik*, p. 333. Ragusan documents mention *nobilis et potens vir dominus Ylia cefalita* who came to Ragusa on 27 October 1321, to take so-called Saint Demetrios' revenue in the name of King Milutin (Jireček, *Spomenik SANU XI*, p. 24). Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 249–251, suggests that both, anonymous *kephale* of Skopje and Ylia, *kephale* in Zeta, had the ranks of *general kephales*, because they governed over particular historical regions.

¹⁴⁸ 1) Two chrysobulls of King Stefan Dušan confirming the donations of Hrelja to the monastery of Hilandar in Štip and Strumica. Edited by Petrović, *ssa* 13 (2014), pp. 7 and 14; 2) Chrysobull of King Dušan to the monastery of Saint Nicolas Mrački in Orehovo. Edited by Marjanović-Dušanić, *ssa* 2 (2003), p. 57, line 3) Charter of King Dušan giving the church of Saint Nicolas in Vranje to the monastery of Hilandar. Edited by Marjanović-Dušanić, *ssa* 4 (2005), p. 74; 4) Charter of King Stefan Dušan to the church of Holy Virgin Perivlepta in

Several articles of the Code determine the rights and duties of a *kephale*. Article 63 (from the first part of the Code) constitutes the right of pre-emption to a *kephale*: “Kephales who are in the cities shall take their income according to law, and let corn and wine and meat be sold to them at one dinar¹⁴⁹ which is sold to others for two; and citizens alone may sell to him and none other” (Кепале є цо съ по градовѣх да оузымаю свои доходыкъ закономъ; и да им' се продаваю жита и вина и меса за динаръ цо иномъ за два; нѣ граганинъ този да мѣ продава, а инь никто).¹⁵⁰ In addition to a *kephale*'s former duties, they were now also entrusted with responsibility for maintaining order on the Tsar's highways, and based on the old principle, they were to hold pecuniary responsibility for robberies and thefts committed within their area (articles 157 and 160). Article 157:

Where there are mixed counties, ecclesiastical and Imperial villages, or seigneurial, and all the villages are mixed, and there is not one lord over the whole county, but if there are kephales and judges whom I have appointed, let them place guards on all roads, and let them hand over the roads to the kephales, to keep them with their guards, and if anyone rob or steal or do any crime, let recourse be had forthwith to the kephale, who shall pay him from his own house, and the kephales and patrols shall seek the robbers and thieves.

Гдѣ се шврѣтато жоупѣ смеснѣ села црквища, или царства ми, или властѣл'ска и боудѣ смѣсна села, и не боудѣ на том'зи жоупомъ єднога господара; нѣ ако боудѣ киѳале и соудїе царства ми, коихъ юстъ поставило царство ми, да поставѣ страже по всѣхъ путѣхъ и киѳалїам да прѣдаде поугощѣ да ихъ блюдѣ стражами; да ако се кѣто гоуси или оукрадѣ, или које зло оучини, тѣзїи чась да гредѣ киѳалїамъ, да имъ плаќаю ѿтъ свое коуси; а киѳале страже да ицѣ, и гоусаре и тати.

Article 160:

If it is to happen that any traveller, merchant or monk be robbed of anything by a brigand or thief, or be in any way detained, let them all come to

Ohrid. Edited by Aleksić, *ssa* 14 (2015), p. 26; 5) Skopje chrysobull of Tsar Stefan Dušan for the kellation of Saint Sabba from Jerusalem in Karea. Edited by Živojinović, *ssa* 7 (2008), p. 63.

¹⁴⁹ The *dinar* was the 12th part of a *perper*. The word comes from the Latin *denarius*.

¹⁵⁰ Burr, “The Code of Stephan Dušan”, p. 210. Burr translated the word *kephale* as “governor”; Novaković, *Zakonik cara Stefana Dušana*, vol. III, p. 116.

me and I will repay them what they have lost and I will recover it from the kephales and lords to whom the patrolling of the road was entrusted. And let any traveller, merchant or Latin come to the first guard with all that he has and bears with him, that the guard deliver him to guard all the way. And if it so happen that he lose anything, there is the jury of trusty men, and whatsoever they shall swear upon their soul to those jurors, that shall the prefects and guards pay them.

Ако се гдѣ слоучи комъ любо гостеви или тръгов'цъ, или калѫгъ тере мѣ оузе ѿ гоуса, или татъ или која годѣ забава; да гредъ тызій вѣси къ царствоу ми да имъ плати царство ми ѿ боудъ изгоубили; а царство ми да ище кieфалie и властѣле коимъ боудѣ поуть прѣданъ и страже прѣдане, и вѣсакы гость и тръгов'цъ и латининъ да приходи къ пръвымъ стражамъ, съ вѣсѣмъ ѿ има и носи да га стражаже прѣдава съ вѣсѣмъ; ако ли се з'годи тере ѿ изгоубили, да іестъ порота вѣровали члов'ци ѿ рекъ доушомъ ер' ѿ изгоубили сонем'зи поротници този да имъ плати кieфалie и страже.¹⁵¹

Article 184 prescribes: "My lords and kephales who hold the towns and market-towns may none of them receive any man for the prison without my warrant. And if any such do receive such a man without my command, let him pay me 500 perpers" (Властѣле и кieфалie царства ми, кои дръже градовъ и тръговъ; никто отъ ныхъ да не приме чиєга члов'ка оу тѣмницъ безъ книге царства ми; аще ли кто кога приме прѣзаповѣдь царства ми, да плати царствоу ми, ф, перь-перь).¹⁵² According to article 194, a *kephale* acts as a judge of the mixed court, but he has no right to collect fines:

The law of fines for Church people. What is adjudged before the Church or kephale, and those fines which are imposed, let the Church have them all, as is written in the charters. Those fines shall be taken from Church people, as the Lord Tsar ordained the law of the land, and let Church officials be appointed treasurers, who will collect the fines and deliver them to the Church, and the Tsar and the kephale shall take nothing.

И глове на црквныхъ людіе законъ. Что се сѹде прѣдъ црквомъ и прѣдъ кieфалемъ, и ти гловѣ что се сѹде да има вѣсе црква, како пише оу

¹⁵¹ Burr, "The Code of Stephan Dušan", pp. 530–531; Novaković, *Zakonik*, pp. 123 and 125–126; *Zakonik cara Stefana Dušana*, vol. III, pp. 144 and 146.

¹⁵² Burr, "The Code of Stephan Dušan", p. 530; Novaković, *Zakonik*, p. 142; *Zakonik cara Stefana Dušana*, vol. III, p. 154.

Христоволихъ те глове да се оузимаю на црквныхъ людьи како є поставиши господинъ царь законъ по земли, и да се поставе црквныхъ людіе гловаріе кои ге събирати те глове, и прѣдавати цркви, а царь ни кефаліе да не узимада ница.¹⁵³

On a *kephale*'s prerogatives in military affairs we do not have much knowledge, but since each town had been fortified, a *kephale* was the captain of the fortress and its troops. In the largest urban fortifications existed another *kephale*, called a *kulski* (from *kula* = tower, fortress).¹⁵⁴ Each of them was under the direct control of the ruler. The *kephale* took care of the regular upkeep of the fortification and the regular functioning of the guards. In order to keep the fortresses in good shape, they had to be from time to time repaired, fortified and sometimes enlarged. The common term for this obligation was *gradozidanije* (see Chapter 5, sections 1 and 4). Much the same can be said for the duty called *gradoblijudenije*—guarding of the town (see Chapter 5, sections 1 and 5).

The *kephale* was also obliged to organize the transport of the Tsar across the region under his administration (see article 6o of the Code), as well as to help with the transferring of larger military units.

2.4 *Byzantine Titles*

After Dušan's proclamation as Emperor (Tsar) in 1346, the most important Byzantine court titles were introduced into Serbia, such as *despot*, *sebastokrator* and *caesar* (*kesar*).¹⁵⁵ According to the Byzantine constitution the right of giving those titles belonged only to the Emperor. That was the reason why the

¹⁵³ Burr, "The Code of Stephan Dušan", pp. 537–538; Novaković, *Zakonik*, p. 145; *Zakonik cara Stefana Dušana*, vol. III, p. 276. The competence of *kephale* as a judge is confirmed by Tsar Dušan's treaty with Dubrovnik from 20 September 1349. The text says that Ragusan merchants, in a case of dispute, shall be adjudged before a customs officer, lord or *kephale* of the town (да се съде предъ царникомъ и к'незомъ, а или предъ кефалиомъ, кои въде градъ, тогази). *ssa* 11 (2012), p. 39. However, Prince Lazar and Vuk Branković allowed the Ragusans (1387) to be adjudged before their own magistrates (да се пре прѣдъ кѣнсѣломъ дѣбропѣскимъ и прѣдъ нихъ съдинами). Charter of Prince Lazar to Dubrovnik from 9 January 1387, edited by Mladenović, *Povelje kneza Lazara*, p. 193; charter of Vuk Branković to Dubrovnik from 20 January 1387, edited by Šuica and Subotin-Golubović, *ssa* 9 (2010), p. 102.

¹⁵⁴ Giving to the monastery of Hilandar, the monastery of Saint George near Skopje, with its manor (1 September 1376–31 August 1377), Vuk Branković says that over the manor there cannot be either "the city *kephale*" nor "the fortress *kephale*" (да несть над нимъ ни кефалие градьскаго, ни коуљскаго). Edited by Bojanin, *ssa* 8 (2009), p. 121.

¹⁵⁵ On Byzantine titles in Serbia see Novaković, "Vizantijski činovi i titule", pp. 178–280. Cf. Lj. Maksimović, "Recepacija vizantijskih državnih institucija u Srbiji i Stojan Novaković"

Serbian monarchs, before Dušan's proclamation as Tsar, did not give titles of the highest imperial rank, although the sources mention their existence even before 1346. However, in those cases they must have been of foreign origin, either Byzantine or Bulgarian. The Tsar's relatives and the most prominent lords carried the titles of *despot*, *sebastokrator* and *kesar*, but those titles designated only honours and ranks, not special functions.

Initially the Greek word δεσπότης corresponded to the Latin term *dominus*, and in the later Roman Empire it became the popular name used for Roman (Byzantine) Emperors. From 1163 it was transformed into a special title, the highest in rank, after the Emperor's. However, in some cases Byzantine writers even after 1163 used the term δεσπότης to designate the Emperor, foreign rulers and some ecclesiastical dignitaries.¹⁵⁶

The title of *despot* was mentioned in Serbia for the first time in the charter of King Stefan Dečanski giving some estates and privileges to the Holy Virgin monastery in Prizren (April 1326). The King says that he sent *despot* Dragoslav and bishop Arsenije (Arsenios) to control the execution of the charter (и пакъ посла кралевъство ми деспота Драгослава съ юпископомъ Арсениемъ да ихъ изнадю, да си је има света цркви како је испръва било).¹⁵⁷ As Božidar Ferjančić suggests, Dragoslav got the title of *despot* from the Bulgarian court, neither from Serbian King Milutin nor his son Stefan Dečanski, like Stojan Novaković thought.¹⁵⁸ Milutin and Stefan Dečanski, not being no Emperors, did not have the right to give the title of *despot*. However, after 1346 the Serbian Tsar started to give the title of *despot* to his relatives and the great lords (вельможа, *velmoža*), such as John (Jovan) Oliver, John Komnenos, Dušan's half-brother Simon (Siniša), Dejan, husband of Dušan's sister Theodora, John Uglješa and others.¹⁵⁹ Since 1402 the title of *despot* designated the Serbian ruler (see above).¹⁶⁰

The title of *sebastokrator* (σεβαστοχράτωρ) was created in Byzantium at the beginning of the reign of Emperor Alexios Komnenos (1081). On that event his daughter Anna, in her famous book *The Alexiad*, wrote:

[“Reception of Byzantine State Institutions in Serbia and Stojan Novaković”], in *Stojan Novaković—ličnost i delo* [Stojan Novaković—His Personality and Work] (Belgrade 1995), pp. 267–272.

¹⁵⁶ On the different meanings of the term *despot* in Byzantine sources, see Ferjančić, *Despoti*, pp. 3–8. On *despots* in Byzantium see also R. Guiland, “Études sur l'histoire administrative de l'Empire byzantin: le despote, δεσπότης”, *REB* 17 (1959), pp. 52–89.

¹⁵⁷ Edited by Mišić, *SSA* 8 (2009), p. 17.

¹⁵⁸ Ferjančić, *Despoti*, p. 158; Novaković, “Vizantijski činovi i titule”, pp. 237 and 245.

¹⁵⁹ On the career of those noblemen, see Ferjančić, *Despoti*, pp. 157–181.

¹⁶⁰ Ferjančić, *Despoti*, pp. 182–194.

Alexius had promised Nicephorus Melissenus [his brother-in-law] the title of caesar. Isaac, the eldest of his brothers, therefore had to be honoured with some higher dignity, and as there was no such rank between that of Emperor and ceasar, a new name was invented, a compound of sebastos (σεβαστός) and autokrator (αὐτοκράτωρ). Isaac was created sebastokrator, a kind of second Emperor (δεύτερον βασιλέα) and senior to the caesar, who received the acclamation in third place.¹⁶¹

In Serbia, this title was introduced after Dušan's proclamation as Tsar (April 1346),¹⁶² but the sources also mention its existence many years before. A very well-known charter presented by King Milutin (1300) to Saint George's monastery near Skopje speaks of a certain Vericha, who committed the crime of high treason, running away to the "sebastokrator Kaloyan Sinadin" (Изгнебри јо се Верија кралевство ми и пође к севастократору Калояну Синадину).¹⁶³ In the letter of Pope Benedictus XII (born Jacques Fournier, the third Avignon Pope, from 1334 to his death 1342) to the Archbishop of Split (16 September 1336), speaking on the obligations of the citizens of Kotor towards the Serbian noblemen, an anonymous *sebastocrator* was mentioned, to whom they had to pay 500 perpers (*Sebastocratori quingentos*).¹⁶⁴ King Dušan's charter issued to the monastery of Holy Virgin Perivlepta in Ohrid (1343–1345), mentions "my Royal nobleman, sebastokrator Kersak" (властелин кралевства ми севастократоръ Керъсакъ).¹⁶⁵ However, as Božidar Ferjančić proved, those *sebastokrators* got their titles either from Constantinople or from Trnovo (capital of the Bulgarian mediaeval State).¹⁶⁶

It seems that the first Serbian nobleman who got the title of *sebastokrator* from Emperor Dušan was the famous John (Jovan) Oliver. The rise of his court career can be perfectly seen from the inscription in the *naos* (cella) of his foundation, the monastery of Lesnovo (in North Macedonia), saying: "Me, John Oliver, the slave of God, by the mercy of God and my Lord King Stefan, have been among the Serbs the great čelnik, then the great servant, then the great duke, then the great sebastokrator and then, for the faithful service by

¹⁶¹ *Alexiade* III, 4, éd. Leib, vol. I, p. 113; English translation by Sewter, p. III. On *sebastokrators* in Byzantium see Ferjančić, "Sebastokratori u Vizantiji".

¹⁶² On *sebastokrators* and *caesars* in the Serbian Empire, see B. Ferjančić, "Sebastokratori i kesari u Srpskom carstvu" ["Sebastokrators and Caesars in the Serbian Empire"], *ZFFB* X-1 (1970), pp. 255–269.

¹⁶³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 323.

¹⁶⁴ Solovjev, *Odabrani spomenici*, p. 122.

¹⁶⁵ Edited by Aleksić, *SSA* 14 (2015), p. 26.

¹⁶⁶ Ferjančić, "Sebastokratori i kesari", p. 257.

the mercy of God, the great despot of all Serbian and Maritime lands and part of Greeks" (Азъ рабъ Христов Іѡанъ Оливеръ по милости божии госто-дина ми крала Стефана биխъ Сръблехъ великиы чељникъ потмъ велики слуга потмъ великиы воевода, потмъ великиы севастократоръ за вѣрное ему поработание по милости божии и великиы деспотъ всеа срѣбеските земле и поморските и єчест-никъ грыкомъ).¹⁶⁷ As the inscription shows, John Oliver had a brilliant career, he carried all the important titles and finally became a *despot*. It seems that he had the title of *sebastokrator* for one year only and than was promoted to *despot*.¹⁶⁸ Dejan, Dušan's brother-in-law had a similar career. He received the title of *sebastokrator* during the reign of Stefan Dušan, because the Tsar calls him "my imperial brother, sebastokrator Dejan" (брать царства ми севастократарь Деянъ).¹⁶⁹ Later on, Dejan got the title of *despot*, probably from Tsar Uroš.¹⁷⁰ Among the other noblemen who carried the title of *sebastokrator*, the sources mention Branko Mladenović, father of Vuk and Grgur Branković, and Vlatko, whose manor was near Kriva Palanka (in south of Serbia).¹⁷¹

The old Roman and Byzantine title of *caesar* (καίσαρος, кесаръ, *kesar*) was introduced in the Serbian Empire as well. The first Serbian nobleman carrying that title was Grgur Golubić, mentioned in the letter of Pope Clement VI (March 1347)¹⁷² as *Gregorius Golubic, caesar regni Rascie*.¹⁷³ Among the bearers of that title, the best known was the military commander Preljub, conqueror of Thessaly. The sources also mention a *kesar* Voihna, lord of the Drama region (in north Greece), a certain Novak (probably Novak Mrasorović) and Vlatko's son Uglješa.¹⁷⁴

¹⁶⁷ I. Ivanov, *Blgarski starini iz Makedonija* [Bulgarian Antiquities from Macedonia] (Sofia 1908), p. 158; Bošković, Đ., "Nekoliko natpisa sa zidova srpskih srednjevekovnih crkava" ["Several Inscriptions from the Walls of Serbian Mediaeval Churches"], *Spomenik SKA* 68 (1938), p. 10.

¹⁶⁸ Ferjančić, "Sevastokratori i kesari", p. 259; *Despoti*, pp. 160–162.

¹⁶⁹ "Dva prepisa potvrđne hrisolulje Stefana Dušana povodom osnivanja manastira Vavedenje Presvete Bogorodice, zadužbine sevastokratora Dejana u selu Arhiljevici kod Preševa" ["Two Transcripts of Confirmatory Chrysobull of Stefan Dušan Regarding the Foundation of Monastery Presentation of the Blessed Virgin Mary of Sevastokrator Dejan in the Village of Arhiljevica near Preševo"], 10 August 1354, edited by V. Aleksić, *ssa* 12 (2013), pp. 34 and 43.

¹⁷⁰ D. Stričević, "Jedna hipoteza o titularnom imenu srpskih despota u XIV veku" ["One Hypothesis on the Titulary Name of Serbian Despots in the 14th Century"], *Starinar* 7–8 (1956–1957), p. 117.

¹⁷¹ Ferjančić, "Sevastokratori i kesari", pp. 260–262.

¹⁷² Born Pierre Roger, Clement VI was the fourth Avignon Pope (1342–1352).

¹⁷³ K. Jireček, "Srpski car Uroš, kralj Vukašin i Dubrovčani" ["Serbian Tsar Uroš, King Vukašin and Ragusans"], in *Zbornik K. Jirečeka* 1 (Belgrade 1959), p. 362, n. 58.

¹⁷⁴ On Grgur Golubić, Preljub, Voihna and Uglješa, see Ferjančić, "Sevastokratori i kesari", pp. 263–268.

Some Serbian legal documents mention the title of *sebastos* (σεβαστός, севастъ, *sevast*), which is no doubt of Byzantine origin. The term was the Greek translation for the Emperor's Latin title—*Augustus*. However, from the time of Emperor Alexios I Comnenos the title lost its importance and became part of many compound titles such as *sebastokrator*, *panipersevast*, *sevastoipertat*,¹⁷⁵ and, in the time of Palaiologoi, *protosebastos* (πρωτοσέβαστος), *pansebastos* *sebastos* (πανσέβαστος σεβαστός) and *pansebastos* (πανσέβαστος).

In Byzantium the *sebastos* was a title, but in Serbia this rank was transformed to a certain extent. Having remained in the same field of administration, its bearers performed relatively defined functions, mainly cadastral and financial duties. King Milutin's second general charter in favour of the monastery of Hilandar (1303–1304) mentions *sebastos* Obrad Maniak, whose task was to fix the manor borders (Δ τε μεγιε ουτεσσα σέβαστη Ὀβράδη Μανιάκη).¹⁷⁶ A *sebastos* could collect fines, as well. The famous Saint George's charter provides that a violator who obstructs the normal irrigation of monastery land has to pay a fine (so-called *potka*)¹⁷⁷ of 21 perpers to a *sebastos* (δα πλατι ποτκου σεβαστου .ΕΙ. περπερ).¹⁷⁸ The same charter forbids all the King's servants (among the quoted dignitaries *sebastos* was mentioned too) from judging the monastery's serfs (ψλοβίκου Светаго Георгија да не соуди никон владоуци по дръжавах' краљевства ми, ни да даде штрокса на нь, ни казнъцъ, ни тег'уни мали, ни соудиша вели ни мали, ни севастъ, ни прахторъ, ни севастъ градески, ни прахторъ градески, ни страже градоу, ни соудиша градоу, ни соудиша жоупски, ни кнезъ жоупъски),¹⁷⁹ and this has led to the conclusion that a *sebastos* had some judiciary competences. However, the most frequent mention of *sebastos* in the sources is in quotations of the list of court dignitaries who were not allowed to enter the monastery manors without the permission of the superior (*hegoumenos*).¹⁸⁰

¹⁷⁵ Cf. L. Bréhier, "L'Origine des titres impériaux à Byzance", *BZ* 15 (1906), p. 160; L. Stiernon, "Notes de prosopographie et de titulature byzantines: sébaste et gambros", *REB* 23 (1965), pp. 226 sq.

¹⁷⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 376.

¹⁷⁷ *Potka* (ποτκα) means at the same time any violation of someone else's estate, a conflict between two villages as to borders, and finally the fine paid in respect of the conflict. For more details see Part 5 (criminal law).

¹⁷⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 322.

¹⁷⁹ *Ibid.*, p. 326.

¹⁸⁰ *Ibid.*, pp. 269, 317, 324, 326; *SSA* 2 (2003), p. 57; *SSA* 4 (2005), p. 74; *SSA* 5 (2006), p. 119; *SSA* 7 (2008), pp. 63, 77; *SSA* 13 (2014), pp. 7, 188; *SSA* 14 (2015), pp. 26, 71; *SSA* 15 (2016), p. 134. On *sebastoi* in Serbia, see Lj. Maksimović, "Sevasti u srednjovekovnoj Srbiji" ["The Sebastoi in Medieval Serbia"], *ZRVI* 32 (1993), pp. 139–147.

These were the most important Byzantine titles adopted in Serbia, although the sources mention many others, but on their competencies we know practically nothing.

2.5 “Executor” (*milosnik*, *милошникъ*)

In numerous Serbian mediaeval documents, starting from the epoch of Stefan Dušan, the term *milosnik* (*милошникъ*) is frequently mentioned. The name comes from the word *milost* (*милошь*), basically meaning “grace”, “mercy”. In legal documents, however, the term *milost* was used whenever the ruler wanted to confirm already acquired rights, conclude commercial treaties or confirm that some financial transaction had been fully realized. The regular formulas used in Serbian charters were *stvoriti milost* (“make milost”), *dati milost* (“grant milost”), *darovati milost* (“present milost”) and *zapisati milost* (“write down milost”). The King’s or Tsar’s servant who was an executor of this *milost* was called a *milosnik*. This means that the *milosnik* was an executor of a certain legal activity or a guarantee that some legal procedure or decision would be carried out. Even more convincing proof of this was discovered in the Latin translation of the Serbian charters: the Serbian term *milosnik* (*милошникъ*) was translated as *executor* (*executor sententie domini regis*).

An analysis of sources shows that among the executors (*milosniks*) were the following court dignitaries: *logothets*, *protovestiars*, *čelniks*, *kephales*, sometimes *župans* and *dukes*, and even the monarch’s son (Crown Prince).¹⁸¹

2.6 1402–1459

Exposed to permanent Ottoman pressure, Despot Stefan Lazarević endeavoured to strengthen a complete system of State defence. In order to accomplish this, he transferred authority over local administration to the dukes (*vojvode*), who were put in charge of all military and civilian affairs in a respective town and surrounding. The military affairs acquired greater importance over civilian ones, not only in towns but also in rural settlements. Each stronger fortress, together with the surrounding rural settlements, became the centre of the *region* (*vlasti*). At its head was a duke. Such structure of local administration limited the position of *kephales*. *Kephales*, however, remained important in several smaller mining centres, while those larger ones, such as Novo Brdo and Srebrenica were put in the charge of dukes.

¹⁸¹ For more details on *milost* and *milosnik*, see Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 59–166.

The militarizing of the complete State administration became obvious in all its manifestations. Within the central administration the most prominent position belonged to the “great duke” (*veliki vojvoda*), while at the local level it was the “duke of the town” (*gradski vojvoda*). In the larger townships the dukes acquired their title through purchase. It was more-or-less the same with the *regions* (*vlasti*). After the expiration of a certain period these dignitaries would lose their position and the title of the duke. The acquisition of the dignity of a duke of a town or a fortress, or region (*vlasti*), was attractive because of the income that position secured.

During the reign of Despot Stefan Lazarević, Byzantine influence concerning its titles slowly disappeared, while Hungarian penetrated. The Despot's *veliki čelnik* (great čelnik) administrated similar duties as did the *comes palatinus* at the Hungarian court.¹⁸²

3 Councils (*državni sabori*, съборъ, зборъ)

3.1 Name

Serbian sources confirm that in mediaeval Serbia there existed representative assemblies of the most powerful lords, worldly and ecclesiastical, usually called “Councils” (*sabori*, Събори, singular = *sabor*, Съборъ, sometimes *zbor*, Зборъ). However, in the Serbian texts the term *sabor* is used in three different meanings: 1) the assembly of Church representatives (Church Councils, *Crkveni sabori*); 2) the assembly of State dignitaries (State Councils, *Državni sabori*); and 3) any other meeting (for example article 69 of Dušan's Law Code mentions “commoners' councils” for the rebellious assembling of commoners). The most frequent usage in the sources of the term *sabor* (съборъ) is for the State Councils, which were held in the presence of the monarch and the most powerful lords. Besides the monarch, these Councils were the most important governmental body in mediaeval Serbia.¹⁸³ However, the sources do not call these kinds of council “State Councils” (*Državni sabori*); rather terms such as “Serbian Coun-

¹⁸² On State administration in that time see M. Dinić, “Vlasti za vreme Despotovine” [“Regions during the Despot's State”], *ZFFB* 10.1 (1968), pp. 237–244; A. Veselinović, *Država srpskih despota* [The State of the Serbian Despots] (Belgrade 2006), pp. 205–213, 243–250; and Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 266–297.

¹⁸³ In modern Serbian, the word *sabor* is used for any kind of assembling, while the Serbian parliament is called *skupština* (assembly). Both terms have the same meaning, derived from verbs *sabratī se* and *skupiti se*, meaning “to gather, to assemble”. Croats use the word *sabor* to designate their parliament (assembly).

cil" (*Sabor srpski*), "All Serbian Council" (*Sav Sabor srpski*) and "Council of All the Serbian Lands" (*Sav Sabor Zemlje Srpske*) are used.

3.2 *The Most Important Councils*

According to the research of Nikola Radojčić, author of the most complete study on Serbian State Councils,¹⁸⁴ in the period from the end of the 12th century to 1459, 37 Councils were held in Serbia. Out of that number it is not possible to say whether 8 of them were actually held or not. We are going to mention several Councils that we consider to be the most important.

According to the testimony of Stefan Nemanjić and Saint Sabba, sons and biographers of Stefan Nemanja, during the reign of their father two Councils were held. The first of them was convoked because of the Bogomilian heresy. Stefan the First Crowned wrote that his father "as soon as he knew that odious and damned heresy took roots in his State, called without hesitation his Archiereus Jephthimios and monks with their superiors, and honourable priests, and his lords, great and small" (Си же прѣподобынъ свѣты мои господинъ ни мали злак'снѣвъ, скоро призывавъ своего ар'хиерета кев'димила глаголема и чрын'це съ игоуменіи своими и чьстънъи иерею, стар'це же и вел'може свое ѿть малла и до велика ихъ).¹⁸⁵ In the second Council it was decided who would be Nemanja's successor on the throne. According to the story of Saint Sabba, Nemanja

gathered his noble children and all his chosen boyars, great and small ... and he elected his noble and beloved son Stefan Nemanja, the son in law of crowned Greek Emperor Kyr Alexios, and he gave him to them, saying:

¹⁸⁴ Radojčić, *Srpski državni sabori u srednjem veku*. On Councils, see also Taranovski, *Istorijsa*, vol. I, pp. 167–197, and Nedeljković, "O saborima i zakonodavnjoj delatnosti u Srbiji". Cf. M. Dinić, *Državni sabor srednjovekovne Bosne* [State Council of Mediaeval Bosnia] (Belgrade 1955) and V. Đurić, "Istorijske kompozicije u srpskom slikarstvu srednjeg veka" ["Historical Composition in Serbian Mediaeval Painting"], *ZRVI* 10 (1967), pp. 131–148. Concise information on Councils can be found in H.M. Cam, A. Marongiu, and G. Stökl, "Recent Work and Present Views on the Origins and Development of Representative Assemblies", in *x Congresso internazionale di scienze storiche, Roma, 4–11 settembre, Relazioni I* (Florence 1955), pp. 86–92, and S. Ćirković, "S'bor. Zur Geschichte der Standesversammlungen bei den Südslaven", in *Osteuropa in Geschichte und Gegenwart. Festschrift für Günter Stökl zum 60. Geburtstag*, ed. H. Lemberg, P. Nitsche, and E. Oberländer (Cologne–Vienna 1977), pp. 58–64.

¹⁸⁵ Edited by Čorović, *Spisi Svetog Save*, p. 82; edited by Jovanović, *Sveti Sava, Sabrana dela*, p. 32.

“Let you have this one instead of me, a good root that came out from my entrails. And I am installing him on the throne of the realm given to me by Christ”.

И ТАКО ПОСЛАВЬ СЪВЪКОУПИ БЛАГОРОДЪНОЮ СИ ДѢТ'ЦОУ И ВЪСЕ ИЗВРАНЬЕ СИ БШЛДРЕ МАЛЫЕ И ВЕЛИКСИЕ ... БОЖІЮ ЖЕ ИЗВОЛЕНІЮ БЫВШІ, ИЗБРА БЛАГОРОДЪНАГО И ЛЮБИМАГО СЫНА СТЕФАНА НЕМАНЮ ВЪ БОГА ВѢНЧАНАГО ЗЕТИ КҮР Алекса Цара Гръцъскаго сего прѣдастъ имъ глаголи сего имѣвите ѿ мене мѣсто, корѣнь благы изъшьдъ изъ оутробы моей и сего посаджданю на прѣстолъ оу Христовъ дарованому ми владычеству.¹⁸⁶

The coronation of King Stefan was done in the monastery of Žiča. As Theodosios says in his *Life of Saint Sabba*, the King invited on that occasion “dignitaries¹⁸⁷ and dukes, great and small župans” (ипаты же и воеводы, мнозы же и жупаны мали же и велици). From the other side the Archbishop invited his bishops (*episkope*), monastery superiors (*igumane*) and all other Church dignitaries.¹⁸⁸ According to the same source, during the reign of King Vladislav (1234–1243), Archbishop Sava Nemanjić (Saint Sabba) convoked the Council and invited King Vladislav and his great lords (призвавъ же ... Владислава краля и благородныхъ его великихъ).¹⁸⁹ The Council designated Arsenios as Sabba's successor on the archiepiscopal throne.

According to the testimony of Archbishop Danilo II, King Dragutin (c.1279) chose the new Archbishop together with the by-God-given Council of his fatherland, Serbian Land, with bishops and monastery superiors and with his orthodox boyars (сътвори възискание съ богодарованымъ юмоу съборомъ отъчества юго, земли сръбъскыи, юпископы же и игоумены и правовѣрныими юго болѣры).¹⁹⁰ The same King abdicated from the throne in favour of his younger brother Milutin at a Council in Dežavo (1282).¹⁹¹ Speaking at the Council where Archbishop Nikodim (during the reign of King Milutin) was elected, Archbishop Danilo II says that the Council could elect the new bishop, not once

¹⁸⁶ Edited by Čorović, *Spisi Svetog Save*, pp. 155 and 157; edited by Jovanović, *Sveti Sava, Sabrana dela*, pp. 154 and 158.

¹⁸⁷ The Serbian text used the word *ipat* (ипатъ), from Greek ὑπάτος = the highest. The same Greek word was used for Roman consuls.

¹⁸⁸ Edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, pp. 140–143.

¹⁸⁹ Ibid., p. 180. The story presented by Domentian is different: the King has invited ecclesiastical and worldly lords as well (ibid., p. 296).

¹⁹⁰ Ibid., p. 308.

¹⁹¹ Ibid., pp. 25–27.

but three times and for many years (изискоује таковааго моужа не јединою нь и тришти, и за въсе годиште).¹⁹² The words of the hagiographer are clear testimony that all issues discussed on Councils were not always solved according to the monarch's will.

Besides narrative sources, information on Councils can be found in legal documents too. For example, in the Dečani charter (1330) we read how King Stefan Dečanski convoked the Council where the monastery chrysobull was presented. It is said:

For that reason, I the sinful and unworthy slave of Christ, Stefan Uroš the Third, by the mercy of God designated as King of all Serbian and Maritime Lands, and with my royal, God-given son Stefan, gathered the Council of Serbian Land: Archbishop Danilo and bishops and monastery superiors and tax collectors and land officials and dukes and servants, and I arranged with them.

сего ради и азъ грешни и недостойни рабъ Христу Стефанъ Оурош трети Богомъ помилованы и Богомъ просвѣщении и поставлени краль в'сѣхъ срѣб'скихъ и помор'скихъ земль и съ Богомъ дарован'нимъ синомъ кралев'ства ми Стефаномъ. събраша з'боръ срѣб'ские земли архиепископа Данила и єпископы и игуомени и каџици и теп'чие и воеводы и слоугы и ставил'це и з'говарих' се с ними.¹⁹³

Stefan Dušan was crowned in 1331 as King at the "Council of Serbian Land in his imperial palace in Svrčin" (и въсемоу събору събраноу земли срѣбъскыи въ царьсцемъ дворѣ юго Срѣбъчинѣ) and as Tsar in 1346 at the Serbian Council in Skoplje (царь Стефанъ вѣнчана се на царьство ... и съ съборомъ срѣбъскыимъ).¹⁹⁴ The most important Council was probably the one held on 21 May 1349 when the first part of Dušan's Law Code was promulgated. In the introduction to the Code it is stated clearly who were the participants of the Council: "This Code is established by our Orthodox Council, by the Most Holy Patriarch Kyr Joanik and by all the archpriests and clergy, both small and great, and by me, true-believing Tsar Stephan, and all the lords of my Empire, both small and great" (Си же законыкъ поставляемъ вът православнаго събора нашего, прѣвѣщи-

¹⁹² Ibid., p. 152.

¹⁹³ Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 137.

¹⁹⁴ Archbishop Danilo II, edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, pp. 218 and 380.

нымъ патріархомъ курь Іоанникіемъ, и въсѣмы архієреи и црквовницы малимы и великыими, и мною благовѣрніемъ царемъ Стефаномъ, и въсѣмъи властели царства ми, малими же и великыими).¹⁹⁵

Tsar Uroš gave the island of Mljet (today in Croatia) to the noblemen of Kotor Bivoličić and Bučić at a Council as well. In the presented charter from 10 April 1357, we can read: "I arranged with the lady and my Imperial mother, the Orthodox Tsarina Kyra Helena, and with my lord and father the Most Holy Patriarch Kyr Sabba, and with all metropolitans, monastery superiors, and all my Imperial mighty lords, and with all Serbian Council" (зговорив се съ господомъ и матерю царства ми, благовѣрною царицею курь Еленою и съ господиномъ и штыцемъ прѣобрѣщеннымъ патриархомъ курь Савомъ и съ всѣми митрополити, и губени и съ всѣми властели велевъзможными подъ рѣкою царства ми и съ всѣми зворомъ срѣбъскими).¹⁹⁶

After the disappearance of Nemanjić's dynasty, Councils were rare. During the reign of Prince Lazar a Council of 1374 was mentioned. At that Council it was announced to "the old Tsarina Elizabeth"¹⁹⁷ and to all noblemen" (и събо-роу вѣсмоу оповѣдајеть, старои царици кирь Јелисавети и вѣсѣмъ соуштиимъ властеломъ) that a Serbian delegation would travel to Constantinople to try to reconcile the Serbian and Byzantine Churches.¹⁹⁸ The most important Council during the reign of Despot Stefan Lazarević was held in Srebrnica (today Srebrenica, in Bosnia), when the Despot's nephew Đurad Branković was designated as his successor. Regarding that event we have a story written by the Despot's biographer Constantine the Philosopher:

The honourable Despot Stefan was more and more suffering from a leg illness. Afraid of death, he sent for his nephew lord Đurad, and this one came to the place called Srebrnica, and there [the Despot] gathered with the Patriarch a Council of honourable priests and nobles of all authorities and all selected, and blessed him [Đurad] on the Council as a lord, saying: "Let him be treated as lord instead of me".

Благочестивааго же деспota Стѣфана постиже множан болесть ножнаа, юже изъ давна страждааше. Тѣмъ же и множаје съмрти оубојавъ се

¹⁹⁵ Burr, "The Code of Stephan Dušan", p. 198; Novaković, *Zakonik*, p. 6; *Zakonik cara Stefana Dušana*, vol. III, p. 98.

¹⁹⁶ Edited by Mihaljčić, *SSA* 3 (2004), p. 73.

¹⁹⁷ Elizabeth (Jelisaveta) was the monastic name of Empress Helen (Jelena), Tsar Dušan's widow.

¹⁹⁸ Archbishop Danilo II, edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, p. 382.

посылають по нептиа своего господина Гюрга и приходить съ въ мѣстѣ
нарицаюмъ Срѣбриница и тоу събирають съ патриархомъ съборъ чисть-
ныихъ архиереев и благородныхъ въсѣхъ властей же и въсѣхъ избранныхъ-
ихъ благословляють того съборомъ на господство глаголе' отъ нынѧ сего
познанїе господина въ мѣсто мене.¹⁹⁹

3.3 Participants, Functions, Importance

Information given by the sources opens several questions: 1) who were the participants at the Council's sessions; 2) what was the competence of the Councils; 3) were the Councils convoked on regular basis or only according to need; and 4) to what extent did the Councils limit the sovereign?

In listing the participants of Councils' sessions, the sources do not give an unvarying formula. An analysis of the texts allows us to conclude that the participants were as follows: always monarch; sometimes his wife and Crown Prince; the highest Church dignitaries—Patriarch (from 1345), Archbishop (from 1219), metropolitans, bishops, monastery superiors (*igumani*) and monks; great and small lords, but not the lesser lords (*vlasteličići*). Some scholars think that even the court dignitaries were present at the Council's session, but such an opinion cannot be proved by the sources. It is most probable that the Council's composition was not precisely fixed and that it was dependent on a mixture of tradition and the monarch's will.

Even the Councils' competence was not precisely determined, so it is very difficult to say whether the Councils had legislative, executive or judiciary power, from a modern point of view. According to the information given by the sources we can conclude which questions were more often discussed and which were discussed only exceptionally. The sources testify that four monastery charters (Saint Stephen monastery in Banska, monastery of Dečani, monastery of Saint Archangels Michael and Gabriel and Lesnovo monastery) and one nobleman's (to lesser lord Ivanko Probišitović) were presented at Councils, but at the same time the sources confirm that the monarch promulgated charters without the presence of Councils. Changes on the throne were referred to at Councils, but there is no information if the Councils elected the monarch or not. The Crown Prince was designated by the monarch (not always according to the right of primogeniture), or sometimes changes on the throne were done by force, whilst the Council would confirm the new sovereign. The competence of the Council was to elect and confirm the new Archbishop and Patriarch, but the Councils did not discuss ecclesiastical matters. An excep-

¹⁹⁹ Edited by Jagić, p. 326.

tion could be Nemanja's Council, convoked because of the Bogomilian heresy, but the Bogomilian problem was not strictly an ecclesiastical matter. The first part of Dušan's Law Code was issued at a Council as well. We do not know whether the same thing happened with the *Syntagma* of Matheas Blastares, the so-called "*Justinian's Law*", or the second part of the Code, but it is probable that they were too. In Tsar Dušan's charter of 2 May 1355, giving some villages to the monastery of Hilandar, we find that the Council held in Krupišta (Крпшишта) discussed a judicial trial.²⁰⁰ Of course, that isolated incident cannot be proof that Councils had judicial competence. According to the testimony of Archbishop Danilo II, of the Council convoked in 1330, after the battle of Velbužd, questions of war and peace were discussed.²⁰¹

Councils were not convoked regularly, on exactly fixed days and seasons, but according to a need, dictated by circumstances.

What was the character of the Councils? In the 19th century, Vladimir Jovanović, an ideologist of Serbian liberals, asserted that Councils were popular representative bodies, some kind of popular assemblies or modern parliaments.²⁰² Such a point of view could be understood, as we know that the 19th century was an epoch of struggles against the autocracy of Serbian Princes from the Obrenović dynasty and at the same time for the rights of popular assembly (parliament).²⁰³ Naturally, modern scholars have refuted Jovanović's arguments, but it still remained very difficult to define precisely the character of the Councils. Certainly, they are very similar to the mediaeval English parliament or *États généraux* in France, but the townsmen did not participate at Serbian mediaeval Councils as they did not represent an autonomous class (*tiers état*). Nevertheless, the Councils succeeded in great measure in limiting the power of the monarch. The formula "I the King (or Tsar) arranged with ..." (зговори се краљевство or царство ми съ ...) is used very often in the sources, showing that the monarch tried very hard to harmonize his will with that of the noblemen. Though the sources do not preserve the information on actual debates held at Councils, we can conclude indirectly that questions were not always accepted unanimously and without any resistance.

²⁰⁰ Novaković, *Zakonski spomenici*, pp. 429–430; Koprivica, "Povelja cara Stefana Dušana Hilandaru za Zabele Ponorac i Kruščicu i trg Kninac".

²⁰¹ Archbishop Danilo II, edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, pp. 187–189.

²⁰² V. Jovanović, *Za slobodu i narod* [For Liberty and People] (Novi Sad 1868), p. 100, and *Osnovni snage i veličine srbske* [Basis of Serbian Strength and Greatness] (Novi Sad 1870), p. 41.

²⁰³ See D. Popović, *Constitutional History of Serbia* (Paderborn 2021), pp. 3–75.

3.4 *Privy Council?*

Some information given by Serbian and Byzantine narrative sources suggests that in mediaeval Serbia there existed some kind of Privy Council, the principal council of the sovereign, composed of the most powerful lords and court dignitaries. We shall quote several examples.

In the *Life of Saint Sabba*, written by Theodosios, the author says that Sabba was going to negotiate with the renegade Strez, who was refusing to recognize the power of his brother King Stefan. When Sabba came back “he invited to his sovereign brother all his principal dukes” (И богоомоудрии же Сава къ самодръж-
цоу братоу въссе начелни его воеводы призвавъ).²⁰⁴ Archbishop Danilo II mentions the “Imperial Synklitos” (и царскому синклиту)²⁰⁵ who participated in Queen Helen’s funeral, besides the King, noblemen and people.²⁰⁶ When King Milutin decided to deprive his son Stefan Dečanski of sight, he consulted with his mighty lords (съ многими велиможи своими съвѣштавъ се).²⁰⁷ After having captured his father Stefan Dečanski, young King Dušan conferred with his lords what to do further (сынъ юго съвѣштание сътвори съ соуштиими юго властели).²⁰⁸ During negotiations with the Byzantine Emperor Andronikos III Palaiologos, King Dušan consulted with “the mighty lords of his fatherland” (съвѣштание сътворь съ сильными отънѣсткии си).²⁰⁹ When the Hungarians attacked Serbia, Dušan ordered that all soldiers from his State were to be gathered and then he would consult with his mighty lords (и великоименитые
свои велиможе призвавъ, и съвѣштание съ тѣми сътворь).²¹⁰

Theodore Metochites writes that for successful negotiations with Serbs, oats are needed from the King (ρηγὸς), Queen-mother (μητρὸς ρηγαίνης) and their governors and the powerful persons from the country (καὶ τῶν κατὰ χώραν σφί-
σιν ἐπιτηδείων τε καὶ μεγίστων ἀνδρῶν). He says that King Milutin chose three or four persons, among his distinguished (τῶν ... ἐκχρίτων) noblemen to join the conversation with him (Metochites) and ordered them to be treated like himself (King Milutin).²¹¹

The most precise is John Cantakuzenos who wrote that during negotiations with King Dušan (July 1342), John met in Serbia a council (βουλή, ἐκκλησία),

²⁰⁴ Edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, p. 113.

²⁰⁵ Greek σύγχλητος = senate, the term which was used for the Senate from Constantinople.

²⁰⁶ Archbishop Danilo II, edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, p. 93.

²⁰⁷ Ibid., p. 126.

²⁰⁸ Ibid., p. 213.

²⁰⁹ Ibid., p. 224.

²¹⁰ Ibid., p. 228.

²¹¹ Ed. Mavromatis, pp. 105, 106; *VIIINJ*, vol. vi, pp. 114 and 118. Cf. note 75 (comment by I. Đurić).

composed of 24 dukes and mighty lords (*τοὺς ἐν τέλει καὶ μεγάλα δυναμένους*).²¹² Is this direct proof that in Serbia there existed a King's Privy Council composed of 24 members?²¹³ It is hard to say, because no legal document gives evidence of the existence of such a governmental body. However, it is very probable that Serbian monarchs, in different circumstances, convoked, beside State Councils, some kind of Privy Council, composed of the most powerful lords. It remains unknown how many members such a council had, whether it was regularly convoked or not, and what kind of competencies it had.²¹⁴

4 Local Administration

During the reign of Nemanjić's dynasty in mediaeval Serbia there existed bigger or smaller territories that were conferred to members of the monarch's family or to noblemen for administration. These were Zeta (Зета, Ζέντα, modern Montenegro), Zahumlje (Захумље, Ζαχλοῦμποι, modern Herzegovina), areas (*области, oblasti*), so-called "Greek Lands", counties (*жупе, župe*), frontier areas (*крајишића, krajishića*) and so-called "države" (holdings, estates). In the 15th century, during the reign of Despot Stefan Lazarević, we find new administrative areas called "vlasti" (regions).

4.1 Zeta and Zahumlje

After 1180 the region of Zeta (modern Montenegro) with the towns of Skadar (modern Shkodër in Albania), Bar, Ulcinj, Budva and Kotor became a part of the Serbian mediaeval State. Stefan Nemanja, the founder of the dynasty, gave Zeta for administration to his eldest son Vukan, who took the title of King. The same title was carried very proudly by Vukan's son Đorđe (George). After his death Vukan's descendants were not mentioned any more as the rulers of Zeta; usually, the region was conferred on the Crown Prince (as with Wales in Britain) or to some other prominent member of the monarch's family. Though some historians have considered that Zeta had some special, privileged position within the Serbian State, the research of Ivan Božić has shown that, according to information given by the sources, we cannot say what kind of privileges Zeta had.²¹⁵

²¹² Bonnae II, pp. 266, 269; *VINJ*, vol. VI, p. 395.

²¹³ See the comment by B. Ferjančić, in *VINJ*, vol. VI, p. 395, n. 118 a.

²¹⁴ See also S. Šarkić, "Organisation du pouvoir en Serbie médiévale", *Études Balcaniques, Cahiers Pierre Belon* 19–20 (2013–2014), pp. 65–87.

²¹⁵ I. Božić, "O položaju Zete u državi Nemanjića" ["On the Position of Zeta in Nemanjić's State"], *IG* 1–2 (1950), pp. 97–122.

During the reign of Stefan Nemanja, Zahumlje or Hum (modern Herzegovina) was governed by Nemanja's brother Miroslav, whose co-signature can be found on the first treaty with Dubrovnik (see Chapter 2, section 3). By Miroslav's order (c.1185) the famous Evangeliry (so-called "Miroslavljevo Jevandelje") was copied.²¹⁶ After Miroslav, Nemanja's youngest son Rastko governed Zahumlje until 1191, when he left the secular life and became the monk Sabba (Sava). Around 1214–1235 and 1247–1249, the Great Prince of Hum Andrej (Andrew) concluded two treaties with Dubrovnik,²¹⁷ but even those documents do not allow the conclusion that Zahumlje had some privileged position.²¹⁸

4.2 Areas (*oblasti, областти*)

During the reign of Tsar Dušan, there existed different areas conferred in administration to the most powerful lords. After Tsar Dušan's death (during the reign of his son Uroš) these mighty lords or their descendants became practically independent rulers in their areas. It has already been mentioned that Dušan's half-brother Simon (Siniša) proclaimed himself Emperor and ruler of Epiros. Later on he expended his "Empire" with the region of Thessaly.²¹⁹ In Macedonia (North Macedonia) Vukašin Mrnjavčević called himself the King and signed his documents as "the lord of Serbian and Greek and Maritime Land and of Occidental parts and of all Dys" (и постави ме господина всемъ стежанию, рѣкъ же земли Срѣбскон и всемъ Грыкомъ и Поморию и странамъ Западнимъ и всемъ Дисъ).²²⁰ From 1366, three brothers Balšić became completely independent in Zeta, and they concluded treaties with Dubrovnik and the Republic of Venice and issued monastery charters.²²¹ The northwest of Serbia was governed by the

²¹⁶ The most important works on "Miroslav's Evangeliry" are: S. Kuljbakin, *Paleografska i jezička ispitivanja o Miroslavljevom jevandelju* [Palaeographic and Linguistic Examinations on Miroslav's Evangeliry] (Sremski Karlovci 1925); L. Mirković, *Miroslavljevo jevandelje* [Miroslav's Evangeliry] (Belgrade 1950); J. Vrana, *L'Évangéliaire de Miroslav. Contribution à l'étude de son origine* (The Hague 1961). Photoprint of the text by I. Stojanović, *Miroslavljevo jevandelje* [Miroslav's Evangeliry] (Vienna 1897). See also *ISN*, vol. 1, pp. 293–295, and n. 40.

²¹⁷ Novaković, *Zakonski spomenici*, pp. 143–144; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 131–132, 185–186; Ravić, *SSA* 12 (2013), pp. 9–19.

²¹⁸ On Zahumlje (Hum), see the recent work by S. Mišić, *Humska zemlja u Srednjem veku* [The Land of Hum in the Middle Ages] (Belgrade 1996).

²¹⁹ On Simon's rule in Thessaly see Ferjančić, *Tesalija u XIII i XIV veku*, pp. 241–265.

²²⁰ Charter to his nobleman Novak Mrasorović, edited by Ćirković, *SSA* 1 (2002), p. 100.

²²¹ Stojanović, *Stare srpske povelje i pisma*, vol. 1, pp. 104–105, 106, 106–107, 109, 109–110, 110–111; Novaković, *Zakonski spomenici*, pp. 270, 289–290, 582–583, 583–584, 584–585, 754, 757, 778–781; *SSA* 5 (2006), pp. 207–227; *SSA* 8 (2009), pp. 101–110, 111–117; *SSA* 9 (2010), pp. 93–98; *SSA* 10 (2011), pp. 103–107; *SSA* 11 (2012), pp. 101–106; *SSA* 15 (2016), pp. 143–155.

Župan Nikola Altomanović, and the region of Kruševac (in the central part of the country) by Prince Lazar.²²² The area of Serres (in Greece) was governed first by Dušan's widow, Empress Helen (Jelena), and from 1365 by Despot John (Jovan) Uglješa.²²³ Later on the number of independent lords increased until 1389, when the majority of them had to recognize the supreme power of the Turkish Sultan.²²⁴

4.3 “Serbian Lands” and “Greek Lands”

During the reign of King Milutin, the sources already marked a difference between “Serbian Lands”, that is the core of Nemanjić’s State, and “Greek Lands”, with reference to the territories conquered from Byzantium. That division became more significant in the times of Tsar Dušan. According to the story of Byzantine writer Nikephoros Gregoras, after proclaiming himself Emperor (Tsar), Dušan

divided with his son [Uroš] the whole territory of the State: he gave to him [to his son Uroš] to govern [the territory] from the Ionian Gulf²²⁵ and the River Danube to the town of Skoplje, according to the Tribalic²²⁶ customs ... He [took] for himself, according to the Roman way of life, Roman [Byzantine, Greek] lands and towns, from there [that is from Skoplje] to the passage near the Christoupolis.²²⁷

ἢδη δὲ καὶ πρὸς τὸν υἱὸν τὴν ὄλην ἡγεμονίαν ἐνειματο· καὶ τῷ μὲν ἄρχειν παρέσχε, κατὰ τὰ εἰθισμένα τοῖς Τριβαλλοῖς, τῆς ἐκ τε κόλπου τοῦ Ἰονίου καὶ αὖ "Ιστρου τοῦ ποταμοῦ μέχρι τῆς τῷ Σκοπίων πολέως ... Ἐαυτῷ δ' αὐτῶν ἐκείθεν Πωμαῖκῶν χωρῶν καὶ πόλεων κατὰ τὴν εἰθισμένην Πωμαίοις δίαιταν, ἄχρι καὶ εἰς τὰ περὶ Χριστούπολιν τῶν παρόδων στενά.²²⁸

²²² See R. Mihaljić, *Kraj Srpskog Carstva* [The End of the Serbian Empire] (Belgrade 1975) = *Complete Works, Book 1* (Belgrade 2001).

²²³ On the Serres area after Dušan’s death, see Ostrogorski, *Serska oblast posle Dušanove smrti*.

²²⁴ See R. Mihaljić, “Doba oblasnih gospodara” [“Epoch of Local Lords”], in *ISN*, vol. II (Belgrade 1982), pp. 21–36.

²²⁵ The Ionian Gulf is the Adriatic Sea.

²²⁶ Tribaloj were a Thracian tribe, living in the Balkan Peninsula in the 5th and 4th centuries BC. Byzantine writers often used the name Tribaloj for Serbs. For more details on Tribaloj, see F. Papazoglu, *Srednjobalkanska plemena u predrimsko doba* [The Tribes from the Middle Balkans in the Pre-Roman Period] (Sarajevo 1969), pp. 11–68.

²²⁷ Christoupolis is modern Kavala in Greece.

²²⁸ Nic. Gregorae, *Byzantina Historia*, xv, 1, Bonnae II, p. 747, lines 5–12. Cf. *VIINJ*, vol. vi, p. 270.

Besides the testimony of Nikephoros Gregoras there are another three documents that are usually quoted as evidence of a real division of the State territory between “Serbian Lands” and “Greek Lands”. The first of them is Tsar Dušan’s charter to the monastery of Hilandar (1348). Confirming his gifts to the monastery, the Tsar says that he “established and wrote the names of all monastery manors in Serbian and Roman Land” (И сико оуздаконивше испи-сасмо имена мѣтодијамъ всѣмъ по Сръблјехъ и по Романії). Further on in the text are quoted 38 villages in “Serbian Land” (Села по земли сръбъскони) and a separate 24 villages in “Greek Land” “with all their borders and rights” (И землѧ греческа и съ сази села съ междами и съ правинама си).²²⁹ The second document is the treaty with Dubrovnik (20 September 1349), which mentions the “Tsar’s and King’s land” (по земл’ли царьства ми и краљев’), the “Tsar’s and King’s market-places” (по трыговехъ царьства ми и краљевехъ) and the “Tsar’s and King’s noblemen” (ни властелинъ царьства ми, ни краљевъ властелинъ).²³⁰ The third document is Tsar Dušan’s chrysobull giving some estates and Saint Nicholas church under Kožalj to Jacob (James), metropolitan of Serres. As the chrysobull contains a short confirming charter by King (Crown Prince) Uroš, the document has been considered further proof of the existence of a State division.²³¹

It is evident that the information given by Nikephoros Gregoras cannot be disputed. However, does it reflect reality? Did two separate administrative parts of the country, one governed by Tsar Dušan according to Byzantine laws and another governed by King (Crown Prince) Uroš according to Serbian laws (customs), exist in Serbia? On that point opinions are divided.

Some historians, starting with Constantine Jireček, accepted the information of Nikephoros Gregoras and believed that the territory of the State was really divided into two administrative parts.²³² The other group of scholars

²²⁹ Edited by Mišić and Koprivica, *ssa* 14 (2015), pp. 69–70.

²³⁰ Edited by Ječmenica, *ssa* 11 (2012), pp. 38–40.

²³¹ Edited by Bojković, *ssa* 15 (2016), p. 96.

²³² Jireček, *Istorija Srba*, vol. 1, p. 222, n. 45; A. Solovjev, “Grečeskie arhonti v serbskom carstve XIV veka” [“Greek Archons in the Serbian Empire of the 14th Century”], *Byzantinoslavica* 2 (1930), p. 275; Taranovski, *Istorija*, vol. 1, pp. 166 and 242; Solovjev and Mošin, *Diplomata graeca*, pp. VII–IX; Ivković, “Ustanova ‘mladog kralja’ u srednjovekovnoj Srbiji”, pp. 70 and 77; T. Tomoski, “Skopje od XI do XIV vek” [“Skopje from the 11th to the 14th Centuries”], in *Spomenici za srednovekovnata i ponovata istorija na Makedonija I* (Skopje 1975), p. 62; L. Slaveva, “Diplomatičko-pravnite spomenici za istorijata na Polog i soosednite krajevi v XIV vek” [“Diplomatic and Legal Documents for the History of Polog and Neighbouring Regions in the 14th Century”], in Slaveva, Miljkovik-Pepek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, pp. 107–111.

thought that the division was formal and theoretic: Tsar Dušan was the real master of the State, because his son Uroš in that moment was only nine years old.²³³ However, according to the research of Ljubomir Maksimović,²³⁴ the Serbian Empire was not divided into two administrative parts; it remained unique under the reign of Tsar Dušan and no Serbian legal document gives proof of continuing division.²³⁵

4.4 *Counties (župe, Жупе)*

Prior to the 12th century, the term *župa* (жупа, in Latin documents *çopa, ioba, supa, iuppa, xupa, gyuppa, çuppa*) designated the settlement of a tribe, usually well protected and hidden by nature.²³⁶ Later on, the counties (*župe*) became governmental districts composed of several villages or towns with a nobleman at its head, who ruled over them in the name of the monarch. In the Serbian legal sources, *župa* is mentioned for the first time in the Great Župan Stefan's treaty with Dubrovnik (1205). It provides for the collective responsibility of the

²³³ Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 71–73; M. Dinić, *Istorija naroda Jugoslavije* [History of Yugoslav People], vol. I (Belgrade 1953), p. 359, and “La division de l’État serbe sous l’empereur Stefan Dušan en ‘pays serbe’ et en ‘Romanie’”, *IG* 1–2 (1995), pp. 7–12; G. Soulis, *The Serbs and Byzantium during the Reign of Tsar Stephen Dušan (1331–1355) and his Successors* (Washington D.C. 1984), pp. 78–80.

²³⁴ Maksimović, “Poreski sistem u grčkim oblastima Srpskog Carstva”, pp. 101–106.

²³⁵ The author was examining all three documents that are usually quoted as evidence for the existence of a division. He concluded the following: 1) charter to the monasteries of Hilandar from 1348 says that all villages in the whole Empire would be exempt from all services, great or small (И СИДЗИ СЕЛА И МЕТОХИЈЕ ИСВОБОДИ ЦАРСТВО МИ УТЬ ЕВЂХ РАБОТЪ, ИЖЕ СЕ ВЕРЂТАЮ МАЛЕ И ВЕЛИКЕ ПО ЗЕМЛЯ ЦАРСТВА МИ; *SSA* 14, p. 71). It is evident that the quoted provision refers to all villages, either in “Greek Lands” or in “Serbian Lands”, and that is the proof that the unique administrative system existed in Serbia (p. 105). 2) The treaty with Dubrovnik (1349) says that trespasses against Ragusans, either in the Tsar’s or in the King’s land will be judged by the Imperial court. The Ragusans, either in the Tsar’s or in the King’s market-places would be responsible to the Tsar’s court. 3) Tsar Dušan gave the charter to the Metropolitan of Serres in the name of the whole family. For this reason, we find the signature of Crown Prince Uroš at the end of the charter (we find the signature of Tsarina Helen as well), but this is not evidence that King Uroš governed over his own part of the State (p. 106). Besides, the author remarks that in Tsar Dušan’s signatures Serbia and Serbs are first mentioned and after that Romania and Greeks, which is proof that Crown Prince Uroš could not rule over the “Serbian Lands” (p. 104). And finally, Dušan’s Law Code was promulgated for the entire territory of the State, insisting on State unity (*ibid.*). Cf. *VIINJ*, vol. VI, p. 271, note 126 (B. Ferjančić).

²³⁶ On the origin and different meanings of the word *župa* see G. Tomović, “Župa”, in *LSSV*, pp. 195–197, with a list of references for further reading.

inhabitants of the counties in cases where Ragusan merchants were plundered (Оу коги ли се жоупи што испакости, тази жоупа вола да да криицае вола да плати).²³⁷

Several articles of Dušan's Law Code regulate the legal position of counties. According to article 134, the county could be given to a nobleman as a hereditary estate: "When the Tsar grants a hereditary estate, let him to whom a village is given ... but to whom a county is given ..." (И цю запис је царъ баџине, комъ запиши село ... а комъ ждпн ...).²³⁸ However, the counties had some kinds of collective property, such as common pasture (art. 75). Dušan's Law Code prescribes a long series of the county's collective duties: building and rebuilding of towns (art. 127); guarding of roads (art. 157); transport of the Tsar (art. 60). The county also had a collective responsibility to pay for damage caused by robbery or theft (art. 126 and 191) or by fire (art. 58) and for when villagers plundered the home of a nobleman who was abroad (art. 144). There were so-called *smesne župe* (жоупи смесене = mixed counties) with no lords over the whole county. Such counties were governed by *kephales* (on their task see above; cf. article 157 of the Code).

4.5 Frontier Areas (*krajišta, краица*)

Krajišta (frontier areas) were the frontier counties established for the purpose of defence. The word comes from *kraj* meaning "end", "termination", "close", "finnish", "completion" or "limit".²³⁹ The frontier areas (*krajišta*) were governed by *vlastela-krajišnici* (lords of the marches, *markgrafen, marchiones, margraves*) with special rights and responsibilities, as was common throughout mediaeval Europe.²⁴⁰ The duties of marcher lords were fixed in two articles of Dušan's Law Code. Article 49 says: "If any foreign army come and ravish the land of the Tsar, and again return through their land, those frontier lords shall pay all, through whose territory they came" (Властъле краици која воиска тоуѓиа греде и племи землю царевъ, теръ прѣиде впеть прѣз' ныихъ землю, тизии властъле, въсе

²³⁷ Novaković, *Zakonski spomenici*, p. 136.

²³⁸ Burr, "The Code of Stephan Dušan", p. 523; Novaković, *Zakonik*, p. 102; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

²³⁹ The word *krajište* is no longer used in modern Serbian. However, we can find a word, even the family name, *krajišnik* = border-soldier, frontiersman. Instead of *krajište*, today the word *krajina* (*крајина*) is used, with the same meaning and etymology. On the territory of ex-Yugoslavia there are still three regions called *Krajina*: 1) in eastern Serbia, close to the Romanian border; 2) in northwest Bosnia, close to the Croatian border; and 3) in north Dalmatia (today in Croatia). See M. Blagojević, "Krajina" and "Krajište", in *LSSV*, pp. 319–321, containing the list of references.

²⁴⁰ Cf. the "palatinates" established by William I in Durham, Chester and Kent.

да плате прѣз' коих прѣиде дрѣжавѣ'). Article 143: "If any brigand, coming through a frontier province, rob anywhere and again return with his booty, let the Warden of the Marches pay sevenfold" (Иако се ѡберѣте гоусарь ишъдъ прѣз' дрѣжавѣ краицьника и плени гдѣ вѣ и впет се врати с пленим, да плаќа краицьникъ самоседмо).²⁴¹

4.6 *Holding, Estate (država, дрѣжава)*

In the local administration of mediaeval Serbia, *država* (holding, estate) meant the area or county given by a monarch to a nobleman, probably lifelong. The nobleman's duty was to govern his estate.²⁴² Article 190 of Dušan's Law Code says that one half of mast in a county "belongeth to the Tsar and one half to the lord on whose estate it is" (Иако се ё жоупи жиръ роди, тога жира царѧ половина, а томѹ властелинѹ чиа є дрѣжава половина).²⁴³ A *država* (holding, estate) could be lost "if any lord be on maintenance and do wrong to any man by rancour, waste his land, burns his house, or do any other mischief" (Кои је властелинъ на прѣселице, комѹ пизомъ које зло ёчини земли пленомъ и којукє пожеже, које любо зло ёчини, такози тази дрѣжава да мѹ се оузме, а ина да не дастъ). The estate would be taken, as well, if any lord "seized villages and people against the law of my Empire" (впленивъ села и людїи и затръвъ прѣзаконъ царства ми).²⁴⁴

4.7 *Regions (vlasti, власти)*

Vlasti (regions) were new military and administrative districts introduced during the reign of Despot Stefan Lazarević.²⁴⁵ The whole country was divided into regions called *vlasti*, governed by dukes (*vojvode*). The first region (*vlast*) mentioned by the sources, in 1410, was the region of Novo Brdo, the most important economic centre of 15th-century Serbia.²⁴⁶ The aim of the reform was to strengthen the defence of the country against the incoming Turkish threat.

²⁴¹ Burr, "The Code of Stephan Dušan", pp. 207 and 525; Novaković, *Zakonik*, pp. 43 and 110; *Zakonik cara Stefana Dušana*, vol. III, pp. 112 and 140.

²⁴² In modern Serbian the word *država* (дрѣжава) means State, country. In mediaeval terminology *država* had five different meanings: 1) State, country, like nowadays; 2) power, *imperium*; 3) part of the country, ruled by any member of the monarch's family; 4) local district, governed by a nobleman; and 5) regions ruled by the Serbian Orthodox Church. See M. Blagojević, "Država", in *LSSV*, pp. 165–169, with list of references.

²⁴³ Burr, "The Code of Stephan Dušan", p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol III, p. 274.

²⁴⁴ Articles 57 and 142. Burr, "The Code of Stephan Dušan", pp. 209 and 525; Novaković, *Zakonik*, pp. 48–49 and 109; *Zakonik cara Stefana Dušana*, vol. III, pp. 114 and 138.

²⁴⁵ In modern Serbian, *vlasti* (власти) is the plural of the name *vlast* (власм), meaning power, control.

²⁴⁶ See J. Mrgić, "Vlasti", in *LSSV*, pp. 92–93, with list of references.

Serbian Orthodox Church

1 Foundation

According to the research of Đorđe Radojičić, Serbs were converted to Christianity between 867 and 874, during the reign of Byzantine Emperor Basil I.¹ Until the end of the 12th century, Serbians were not under a single ecclesiastical organization. Some Serbs were subject to the jurisdiction of the Roman Catholic Archbishops of Split, Dubrovnik (today in Croatia) and Bar (today in Montenegro). The other Serbs were subject to the episcopates of Niš, Ras, Prizren and Lipljan,² which all belonged to the Greek Orthodox Archbishopric of Ohrid (today in North Macedonia). For a short time, some Serbs lived under the jurisdiction of the Greek Metropolitan of Dyrrachion (Greek Δυρράχιον, ancient *Epidamnos*, Serbian *Drač*, *Драч*, Italian *Durazzo*, modern *Durrës* in Albania). The border, separating the Roman Catholic and Greek Orthodox Churches, crossed through Serbian Lands.³

The first step towards the foundation of an autocephalous Serbian Church was practically made in 1191, when Nemanja's third son Rastko left the administration of Hum and became the Holy Mountain monk Sabba (Sava, Сава). His father joined him on Holy Mountain one year after his withdrawal from the throne (1197). In 1198, Nemanja and Sabba were granted a chrysobull from Byzantine Emperor Alexios III Angelos, permitting them to restore the small and abandoned monastery of Hilandar. In this way, Hilandar became an independent Serbian monastery, governed by father and son. In the same year Nemanja issued a charter in favour of Hilandar, creating the monastery manor.⁴ The existence of an autonomous Serbian monastery in the territory of the Byz-

1 D. Radojičić, "La date de la conversion des Serbes", *Byzantion* 22 (1952), pp. 253–256.

2 Niš and Ras are situated in the south of Serbia; Prizren and Lipljan are in Kosovo.

3 On Church organization in that epoch, see J. Kalić, "Crkvene prilike u srpskim zemljama do stvaranja arhiepiskopije 1219. godine" ["Church Circumstances in Serbian Lands until the Creation of the Archbishopric in 1219"], in *Međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 27–53, and I. Komatina, *Crkva i država u srpskim zemljama od XI do XII veka* [Church and State in the Serbian Lands from the 11th to the 13th Centuries] (Belgrade 2016).

4 On the foundation of Hilandar, see F. Barišić, "Hronološki problemi oko godine Nemanjine smrti" ["Chronological Problems on the Year of Nemanja's Death"], *HZ* 2 (1971), pp. 31–58. Cf. D. Bogdanović, V.J. Durić, and D. Medaković, *Hilandar* (Belgrade 1978) (D. Bogdanović).

antine Empire clearly shows the intentions of the first Nemanjićs—a desire to create an autocephalous Church.

Nemanja's policy of friendship with Byzantium could not continue to exist after his death in 1199. The crusade's conquest of Constantinople (1204) and the splitting of Byzantium into several States, turned his son and successor Stefan Nemanjić to the West. In 1217 he obtained the royal crown from Rome. It seems that Sabba was not satisfied with the pro-Occidental policy of his brother. In the same year he left Serbia again (since 1206 he had been the superior of Studenitza monastery) and went to Holy Mountain. Two years later Sabba arrived in Nicaea (Νίκαια, modern Iznik in Turkey) where he obtained from the Emperor Theodore I Laskaris (Λάσκαρις)⁵ and Patriarch Manuel I Sarantenos or Charitopoulos (Μανουήλ Α' Σαραντηνός ή Χαριτόπουλος) an act constituting an autocephalous Serbian Church. According to that act Serbian priests had the exclusive right to elect their own Archbishop (Αρχιεπίσκοπος, literally “chief bishop”) without any participation of the Constantinopolitan Church or the Byzantine Emperor. Sabba became the first Serbian Archbishop: nomination and *chirotony* (Greek χειροτονία, literally “strectching forth the hands”) was done in presence of both Emperor and Patriarch on Palm Sunday in 1219.⁶

On his way back to Serbia, Sabba stopped first in Hilandar and than in Thessaloniki, where he was guest of the famous Metropolitan of Thessaloniki Constantine III Mesopotamites (Κωνσταντίνος Γ' ὁ Μεσοποταμίτης).⁷ It seems that during his stay in Thessaloniki, in the monastery of Philokales (Φιλοκάλες), Sabba composed his *Nomokanon* (Ζακονοπραβιλο).

5 Theodore I Laskaris, founder of the Empire of Nicaea and its Emperor (1205–1221).

6 Palm Sunday is the Sunday preceding Easter, commemorating in Christian churches Jesus' entry into Jerusalem, when the people strewed palm branches before him. On the foundation of the Serbian Archbishopric, see N. Radojčić, “Sveti Sava i avtokefalnost srpske i bugarske crkve” [“Saint Sabba and Autocephaly of the Serbian and Bulgarian Church”], *Glas SKA* 179 (1938), pp. 177–258; B. Gardašević, “Kanoničnost i sticanje autokefalnosti Srpske crkve 1219. godine” [“Canonicity and Acquiring of the Autocephaly of the Serbian Church in 1219”], in *Sveti Sava, Spomenica povodom osamstogodišnjice rođenja 1175–1975* (Belgrade 1977), pp. 33–77; B. Ferjančić, “Avtokefalnost Srpske crkve i Ohridska arhiepiskopija” [“Autocephaly of the Serbian Church and Archbishopric from Ohrid”], in *Međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 65–72; S. Pirivatić, “Kriza vizantijskog sveta i postanak kraljevstva i autokefalne arhiepiskopije svih srpskih i pomorskih zemalja” [“Crisis in the Byzantine World and the Beginning of the Kingdom and Autocephalous Archbishopric of All the Serbian and Maritime Lands”], in *Kraljevstvo i Arhiepiskopija u srpskim i pomorskim zemljama Nemanjića* [The Kingdom and the Archbishopric of the Serbian and Maritime Lands of the Nemanjić Dynasty] (Belgrade 2019), pp. 107–146. On chronology see V. Laurent, *Les regestes des Actes du patriarcat de Constantinople 1/4* (Paris 1971), no. 1225.

7 On Sabba's sojourns in Thessaloniki, see M. Živojinović, “O boravcima Svetog Save u Solunu” (“On the Sojourns of Saint Sabba in Thessaloniki”), *IČ* 24 (1977), pp. 63–71.

2 Organization

The new autocephalous Serbian Church had to be organized for the whole territory of the Serbian State. For this reason Sabba started to found new Serbian episcopacies. The monastery of Žiča became the seat of the first Serbian Archbishop. In this monastery Sabba performed the *chirotony* (the liturgical rite by which a candidate was ordained into one of the three major orders of the Christian clergy) of his eight followers for *episcopes* (bishops, from Greek ἐπίσκοπος) of the new and of the already existing dioceses (Greek διοίκησις, territorial unit of ecclesiastical administration). The list of episcopacies belonging of the Serbian Church can be seen from a short inscription preserved in one of the manuscripts of Matheas Blastares' *Syntagma* from 1453. The text has a title: "Chrysobull of Saint Sabba himself and his brother Stefan the First Crowned King, on seats of Serbian *episcopes*". Those of Hum and Zeta in the Maritime Lands, and the dioceses of Hvosno, Budimlje, Dabar, Moravica, Toplica, Ras, Prizren and Lipljan, in inner Serbia (Христовъ џълъ самога светаго Савы и брата ёго пръвовѣнъчанънаго краля Стефана, мѣста епископомъ срѣбескымъ: ·ѧ. зетсъкыи, ·ѡ. рашкыи, ·ѓ. хвостыкы, ·đ. хљьмькы, ·ћ. топличкы, ·š. вѣдимькы, ·ѓ. дѣвѣрькы, ·ђ. моравичкы).⁸ The Episcopacy of Hum, with its seat in Ston (today in Croatia) had to oppose Roman Catholic influence coming from the Archbishopric of Dubrovnik (Ragusa). The peninsula of Prevlaka became the seat of the Episcopacy of Zeta, opposed to the Roman Catholic Archbishopric of Bar. However, none of the Roman Catholic dioceses within the Serbian State were abolished. Otherwise, the policy towards Greek Orthodox *episcopes* was different: the bishops of Ras, Prizren and Lipljan (all of them Greeks) were immediately, by hook or by crook, replaced with Serbian clergy.

Such a policy provoked a struggle with the Greek Orthodox Archbishopric of Ohrid, which was in that epoch governed by the educated canonist Demetrios Chomatenos (Δημήτριος Χωματηνός).⁹ In his letter to Sabba (May 1220), Cho-

⁸ Editions: Stojanović, *Stari srpski zapisi i natpsi I*, nos 302 and 303, pp. 93–94; Čorović, *Spisi Svetog Save*, p. 196. On the organization of the Serbian Church, see M. Janković, "Episkopije srpske crkve 1220. godine" ["Episcopacies of the Serbian Church in the Year 1220"], in *medunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 73–84.

⁹ Demetrios Chomatenos, a central ecclesiastical figure in the independent State of Epiros; born mid-12th Century, died c.1236. In 1216/17 he was appointed Archbishop of the Autocephalous See at Ohrid by Theodore Komnenos Doukas, and in 1225 or 1227/8 Chomatenos crowned Theodore Emperor in Thessaloniki, thus inviting the censure of Patriarch Germanos II at Nicaea and causing a schism (1228–1233) between the Epirot and Nicaean churches. See R.J. Macrides, "Chomatenos, Demetrios", in *ODB*, p. 426.

matenos severely protested against the foundation of the autocephalous Serbian Church, against Sabba's *chirotony* for Archbishop and especially against the expulsion of the bishop of Prizren. According to him, the Serbian Lands were under the jurisdiction of the Archbishopric of Ohrid, and all that Sabba had done was against the rules of canonic law.¹⁰ Chomatenos repeated the same arguments a few years later (after 1224) in his letter to the Patriarch of Nicaea, Germanos II, answering the Patriarch's remarks on Chomatenos' coronation of Epiros' Despot Theodore Komnenos Doukas of the Angelos family, for the Emperor of Thessaloniki.¹¹ However, all the protests of Chomatenos were without results. Things could have become dangerous after the death of King Stefan the First Crowned (1227), when his son and successor King Radoslav, under the influence of his wife, the daughter of Theodore Angelos, asked the authority of Ohrid and its Archbishop Chomatenos on some liturgical questions.¹² But even that fact did not provoke a serious crisis: the Serbian Church was definitely established.

3 Legal Acts

The basic legal document, some kind of constitution of the Serbian Orthodox Church, was the *Nomokanon* of Saint Sabba, composed on Sabba's way back from Nicaea. The *Nomokanon* contains ecclesiastical rules and Roman (Byzantine) laws (see Chapter 2, section 4).

From a constitutional point of view, the *Nomokanon* of Saint Sabba defined the relationship between Church and State (monarch). Sabba chose those Byzantine laws that considered the monarch as submitted to the law. Canonic law has supremacy over secular laws, and that was a condition for so-called *symponia*—concordance between Church and State (see above). The Emperor (monarch) has the executive and legislative power, but he has no right to

¹⁰ G. Ostrogorski, "Pismo Dimitrija Homatijana sv. Savi i odlomak iz pisma patrijarhu Germanu o Savinom posvećenju" ["Demetrios Chomatinos' Letter to St Sabba and a Fragment from the Letter to Patriarch Germanos on Sabba's Chirotony"], *sz* 2 (1938), pp. 91–125 = *Complete Works*, vol. IV (Belgrade 1969), pp. 170–189.

¹¹ The correspondence between Chomatinos and Germanos with translation into Serbian was edited by Gardašević, "Kanoničnost i sticanje autokefalnosti Srpske crkve 1219. godine". Cf. M. Petrović, *Studenički tipik i samostalnost srpske crkve* [The Studenitza Typikon and Autocephaly of the Serbian Church] (Belgrade 1986).

¹² F. Granić, "Odgovori ohridskog arhiepiskopa Dimitrija Homatijana na pitanja srpskog kralja Stefana Radoslava" ["The Answers of Archbishop of Ohrid Demetrios Chomatinos on the Questions of Serbian King Stefan Radoslav"], *sz* 2 (1938), pp. 147–189.

interfere in ecclesiastical matters (election and *chirotony* of *episcopes*), while the Church has a right of moral control of a ruler. The Church enjoys extensive judicial immunities, but *episcopes* can interfere in favour of poor persons and the unjustly persecuted.

Besides the *Nomokanon*, Sabba composed some other legal acts important for the organization and functioning of the Serbian autocephalous Church.¹³ The first of them was *The Act of Restoring of the Holy True-Believing Orthodox Faith*, promulgated in 1221 in the monastery of Žiča, which represented a Serbian version of *The Synodikon of Orthodoxy* (Τό Συνοδικόν τῆς Ὁρθοδοξίας).¹⁴ By that act the orthodoxy of the Serbian Church was defined and proclaimed. The document accepts all fundamental dogmata of the faith, according to the teachings of the Holy Fathers and dogmatic decrees of the Ecumenical Councils. On the other side, the *Act* anathematizes different heresies, which could be in either the Ecumenical or Serbian Church (as was the Bogomilian heresy).

Special attention was paid to the organization and development of monastic life. As Sabba himself was a Holy Mountain monk, monastic life and monastery constitutions (*typikon*, Greek τυπικόν, Slavonik ѹставъ or типикъ) were created according to the Byzantine model. The aim of Saint Sabba was to introduce into Serbia both types of Byzantine monastic organization: cenobitic and anchoritic.

Cenobitic (Greek κοινόβιον, Latin *caenobium*, Serbian ѹбъште житие = place of common life) monasteries were organized as a firm community of spiritual life and economy, without private property, on the principle of absolute obedience and a strict division of duties. A superior (*iguman*, *hegoumenos*), who had extensive competencies, governed the monastery, but he had to consult the council of monks. Every function in the monastery was treated as a “service” (*služba*, служба) and every work as an “obedience” (*poslušanje*, послушање), so the power of the prior could not be unlimited. He had to consult not only the

¹³ On Sabba's legal documents see V. Mošin, “Pravni spisi svetoga Save” [“Legal Scriptures of Saint Sabba”], *Međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 101–128.

¹⁴ A liturgical document produced after “The Triumph of Orthodoxy” (“ὁ Θρίαμβος τῆς Ὁρθοδοξίας”, before 920), the final defeat of Iconoclasm in 843, celebrated as the “Sunday of Orthodoxy” (“ἡ Κυριακὴ τῆς Ὁρθοδοξίας”) on the first Sunday of Lent. See V. Mošin, “Serbskaya redakciya Sinodika v nedelju pravoslaviya” [“Serbian Editing of Synodikon in Sunday of Orthodoxy”], *VV* 16 (1959), pp. 317–394, 17 (1960), pp. 278–353, and 18 (1961), pp. 359–360; A. Jevtić, “Žička beseda Svetog Save o pravoj veri” [“Žiča Oration of Saint Sabba on the True Faith”], in *Sveti Sava. Spomenica povodom osamstogodišnjice rođenja 1175–1975* (Belgrade 1977), pp. 117–180.

council of monks, but the other monastery officials as well.¹⁵ The most important of them were: 1) steward (*иκονόμη, οἰκονόμος*) whose task was to govern the monastery's economy, and was considered as the superior's replacement and potential successor;¹⁶ 2) *ekklesiarches* (*εκλισιαρχή, ἐκκλησιάρχης*) who had to control the exact maintaining of divine services and the cleanness of the church and to provide the appropriate number of candles and lamps for the lighting of the church;¹⁷ and 3) *docheiarios* (*Δοχειάρης, δοχείαριος*) whose duty was to enter in the monastery cash-book all revenues and expenses.¹⁸ The King or Archbishop elected superiors of the great monasteries. This implies that they had a great reputation in society. All monks had to respect three oaths: of chastity, of poverty and of obedience. Interpersonal relationships were under the control of superior who tried very hard to induce the spirit of love and help. Permanent care for sick persons established small hospitals within the Serbian monasteries.¹⁹

For the needs of cenobitic monasteries Sabba composed two typikons (for Hilandar and Studenitza), which were used later as constitutions for all Serbian monasteries.²⁰ The typikon of the Holy Mother Benefactress (*εὐεργέτης, Благодательница*) monastery in Constantinople served as a model.

The typikon for a hermit's cell (*κελλίον*) in Karyes (1199) became a model for all Serbian anchorite monasticism that emanated out from Holy Mountain.²¹ The Slavonik word *skitski* (*сикитски*, from Greek *σκήτη, asketerion*, "monastery", "hermitage") also commemorates the original Skete (Greek Σκῆτης, Coptic *Shiet*), one of the most famous early Christian monastic centres in the Wādī Natrūn (west of the Nile Delta in Egypt). According to the Karyes typikon, Serbian anchorites did not live alone, but rather in a community of two or

¹⁵ F. Granić, "Crkvenopravne odredbe Hilendarskog tipika sv. Save o nastojatelju i ostalim manastirskim funkcionerima" ["Ecclesiastical and Legal Rules of St Sabba's *Typicon* on Superior and Other Monastery Officials"], *Bogoslovije* 10 (1935), pp. 171–188; "Crkvenopravne odredbe Hilendarskog tipika sv. Save" ["Ecclesiastical and Legal Provisions of St Sabba's Hilandar *Typicon*"], *sz* 1 (1936) pp. 65–128; "Crkvenopravne odredbe Karejskog i Hilendarskog tipika Svetoga Save" ["Ecclesiastical and Legal Provisions of Karyes and Hilandar *Typicon* of St Sabba"], *PKJIF* 16 (1936), pp. 189–198.

¹⁶ See R. Milošević, "Ikonom", in *LSSV*, pp. 252–253.

¹⁷ See M. Janković, "Eklisijarh", in *LSSV*, pp. 179–180.

¹⁸ See S. Popović, "Manastirski kompleks", in *LSSV*, pp. 381–384.

¹⁹ L. Pavlović, "Srpske manastirske bolnice u doba Nemanjića" ["Serbian Monastery's Hospitals in the Epoch of Nemanjićs"], *Zbornik pravoslavnog bogoslovskog fakulteta* 2 (1951), pp. 555–566.

²⁰ Edited by Ćorović, *Spisi sv. Save*, pp. 14–150, and Jovanović, *Sveti Sava, sabrana dela*, pp. 13–147.

²¹ Ćorović, *Spisi sv. Save*, pp. 5–13; Jovanović, *Sveti Sava, sabrana dela*, pp. 3–11.

three persons. Nobody could become a hermit only by his own desire, but by a decision of the whole monastery council. The superior and the whole community had to consider whether the candidate was fit for a severe anchoritic life, full of continuous prayers and fast. Later, cells of Serbian hermits became a centre of literary activity.²²

4 Proclamation for a Patriarchate

The Serbian Orthodox Church became a Patriarchate in 1346. The proclamation was firmly connected to the wider policies of King Dušan and his intentions of becoming Emperor (Tsar). At the end of 1345 (probably on Christmas), Dušan was proclaimed Tsar in the city of Serres. The new title had to be approved by the Church in the rites of coronation and anointing. According to mediaeval customs, the Patriarch of Constantinople crowned Byzantine Emperors, while the Pope crowned Emperors of the West (starting with Charlemagne in 800). Dušan knew perfectly well that in such political circumstances neither the Patriarch of Constantinople nor the Pope (in that epoch in the French town of Avignon) would accept putting the imperial crown on his head. So, as the Empire could not exist without a Patriarchate and a Patriarch, it was decided to assign such a dignity to the Serbian Archbishop. The Serbian and Ohrid's archbishoprics and the Bulgarian Patriarchate supported this decision. With the assent of the three autocephalous Churches and in the presence of Serbian *episcopes*, Archbishop of Ohrid and Patriarch from Trnovo, Serbian Archbishop Ioanikije (Ιωανικιέ, Ιωαννίκιος) was proclaimed as Patriarch (between January and April 1346).²³ The State Council, gathered on that occasion in Skoplje, accepted the proclamation of Emperor and Patriarch. In the most solemn way, in the presence of the State Council and according to ecclesiastical rites and Byzantine ceremony, Dušan was crowned as Tsar in Skoplje at Easter, 16 April 1346. He received the imperial crown from the hands and with the blessing of Serbian Patriarch Ioanikije and Patriarch from Trnovo Simon. The blessing was given by all Serbian and Bulgarian, and some of the Greek, clergy, Holy Mountain protos (πρωτώς, head of the Πρωτάτον, the central administration of Mount Athos) and all hegoumenes and important monks from the Holy Mountain

²² On Serbian monastic life in the Middle Ages, see Marković, *Pravoslavno manastvo i manastiri u srednjovekovnoj Srbiji*.

²³ M. Purković, *Srpski patrijarsi srednjeg veka* [Serbian Patriarchs from the Middle Ages] (Düsseldorf 1976), pp. 17, 18.

monasteries. However, the most important blessing—the one of Patriarch of Constantinople—was missing.

As Dušan acquired the imperial crown and founded the Patriarchate without the agreement of the Byzantine Emperor and Patriarch, he was looking for the jurisdiction in the Christian Church teaching. In his documents he insists “that all happened not according to my desire, neither by some force, but according to the blessing of God” (see above).

5 Conflict and Reconciliation with Constantinople

The proclamation of a Serbian Patriarchate provoked a reaction from Constantinople: using his rights, Kallistos I (Καλλιστός), Patriarch of Constantinople (1350–1353 and 1355–1363), excommunicated Emperor Dušan, Serbian Patriarch Ioanikije and all priests from that Christian community.²⁴ After that act, the Orthodox world considered that the position of the Serbian Church was not legal. Relations with the Great Church of Constantinople were broken off, and the act of excommunication (*odlučenje*) meant that the Serbian high ecclesiastical hierarchy was not in canonical connection with Constantinople, and probably with the other Orthodox Churches as well. The Serbian court was excommunicated of the Ecumenical Patriarchate too, while the lower clergy and the people were not, but they suffered the consequences of the schism. However, after the death of Tsar Uroš (1371), Prince Lazar, pretending to be sovereign lord of the whole of Serbia, began to seek reconciliation in order to establish canonical unity and legalize, in that way, his own position. The schism disturbed his claim as supreme ruler of all the Serbian Lands, and he had to put it to an end.²⁵ Symmetry between the holders of secular and spiritual power, as a required characteristic of sovereignty according to the mediaeval Orthodox concept, had to exist.

²⁴ The precise date of the “anathematize” remains unknown, but it could have happened between June 1350 and November 1353, when Kallistos was for the first time Patriarch of Constantinople. According to Ostrogorski, *Serska oblast posle Dušanove smrti*, p. 129, the excommunication was pronounced in autumn 1350, being a part of John Cantacuzenos’ large offensive against Serbia. V. Mošin, “Sv. patrijarh Kalist i srpska crkva” [“St Patriarch Kallistos and the Serbian Church”], *Glasnik srpske pravoslavne crkve* 9 (1946), pp. 192–206, thinks that the *anathema* came after the armed conflict between John v Palaiologos and John vi Cantacuzenos (late autumn 1352–November 1353).

²⁵ For more details on the reconciliation, see D. Bogdanović, “Izmirenje srpske i vizantijiske crkve” [“Reconciliation of the Serbian and Byzantine Church”], *O knezu Lazaru*, pp. 81–91, and Đ. Slijepčević, *Istorija srpske pravoslavne crkve* [History of the Serbian Orthodox Church], vol. 1 (Belgrade 1991), pp. 160–175.

Partial reconciliation was attained even before, in the region of Serres. For the purpose of organizing a common front against the Turks, the Byzantines started negotiations with the court in Serres (1346), governed by Dušan's widow Empress Helen (Jelena, Јелена), but the reconciliation was attained not until 1371, just before the battle of Maritza (ancient Ἐρέπος, Černomen, modern Ormenion in Greek Thrace) with Despot John (Jovan, Јован) Uglješa. A few years later (1386), John Uglješa issued a letter, some kind of penitence, pronouncing harsh words against Tsar Dušan as a usurper of Byzantine imperial and ecclesiastical rights.²⁶ The letter, however, is the product of a Byzantine hand and was written in Constantinople. Only the Serbian signature belongs to Uglješa. The main purpose of the letter was to repudiate the jurisdiction of the Serbian Church in conquered Byzantine territories and to return the metropolitanates to the jurisdiction of the Patriarchate of Constantinople. However, John Uglješa's separate reconciliation with Constantinople did not arrange official relationships between the two Orthodox Churches. Definitive reconciliation was done when the initiative came from Prince Lazar, as supreme holder of secular power, and Serbian Patriarch Sabba (Sava) IV, as head of a Church.

According to the story of Bishop Mark (Marko, Марко), immediately after the death of Patriarch Sabba (29 April 1375), pious Prince Lazar took advice from the Council, his noblemen and the Holy Mountain monks. They all made a decision to choose the delegates for negotiations with Constantinople.²⁷ However, it seems that a decision was made at the end of 1374 (before the death of Patriarch Sabba) by a State Council. After that, the Serbian delegation, composed from Holy Mountain monks (without any bishop), went on negotiations to Constantinople.

The agreement of reconciliation, very favourable for the Serbs, was attained in Constantinople, it seems, very easily. "Dissolution" of the act of excommunication was given to the Serbs. According to the Serbian sources, the Great Church from Constantinople recognized the autocephalous Serbian Patriarchate as legal.²⁸ The proclamation of reconciliation was done in Prizren,

²⁶ The text of the letter was edited by F. Mikloich and J. Müller, *Acta et diplomata graeca medii aevi sacra et profana I* (Vienna 1860), pp. 660–664, and Solovjev and Mošin, *Diplomata graeca*, pp. 259–267 (with a translation in Serbian). Cf. Petrović, *Studenički tipik i samostalnost srpske crkve*, where the author gives a new translation of John Uglješa's letter (pp. 163–165).

²⁷ D. Trifunović, "Žitije svetog patrijarha Jefrema od episkopa Marka" [“Life of Saint Patriarch Jephrem Written by Bishop Mark”], *Anali filološkog fakulteta* 7 (1967), p. 71.

²⁸ However, there are no Greek sources which testify on recognition. For more details see

on the grave of Emperor Dušan, in his foundation—the monastery of Saint Archangels Michael and Gabriel (in spring 1375). In that act two delegates of the Patriarchate of Constantinople—monks Matthew and Mark—participated. This way the conflict was over.

6 Legal Position

The Serbian Orthodox Church had a privileged position in the Serbian mediæval State and society. Some of those privileges were analysed in Part 2, concerning the law of persons, and the others will be examined in Part 4, Chapters 11, 12, and 14, on the law of property, the law of obligations, and family law; Part 5 on criminal law; and Part 6 on the judiciary system. Here, we will quote only those articles of Dušan's Law Code which regulate the general privileges and organization of the Church.

Article 12 gives a general declaration on the organization of the Church, saying: "And laymen²⁹ shall not judge clerical matters. And should any layman judge an ecclesiastical matter, let him pay 300 perpers. Only the Church shall judge [ecclesiastical matters]" (И доуходовномъ дльгѹ, козмици да не сѹдѣ; кто ли се наидє въ козмикъ соудивъ црксовномъ дльгоу да плати. Т. перперь; тъкъмо црксовъ да соудаи).³⁰

On the duties of bishops speaks article 11:

And bishops shall appoint priests in all parishes, in towns and in the villages: and those priests shall be those who have beeen blessed by the bishops spiritually to bind and to set free, and let every man hearken to them, according to the law of the Church. And those priests whom bishops have not appointed, let them be driven out and let the Church punish them according to the law.

И светитељи да поставе доуходовници по въсѣхъ иноїахъ, по градовѣхъ и по селѣхъ; и тизы доуходовници да сѹ кони сѹ благословени отъ светитеља и доуходово везати и рѣшити и да ихъ слѹша въсаки по закономъ црксовномъ;

D. Bogdanović, "Oživljavanje nemanjičkih tradicija" ["Restoring of Nemanjić's Traditions"], in *ISN*, vol. II (Belgrade 1982), p. 13 and notes 23 and 24.

²⁹ The word is *kosmici*, Greek *κοσμικοί*, worldly as opposed to spiritual men.

³⁰ Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 16; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

и юнициј доуходници, коих несѹ поставили доуходници да се иждено; да их вѣдења цркви по закону.³¹

Article 13 says that “Metropolitans, bishops or hegoumenos may not be appointed by bribery; and from now whoever shall be appointed Metropolitan, bishop or hegoumenos by bribery, let him be accursed, as also he who appointed him” (И митрополитије, јепископије, игоумни по митѹ да се не постава; и што съда ксто се наиде поставивши по митѹ митрополита, или јепископа, или игоумна, да јесте проглеђен и юн'зији кои га је поставил).³²

Articles 4 and 5 give to the bishops the right to mete out ecclesiastical punishments:

Article 4:

And as his spiritual duty, every man must show obedience and submission to his archpriest. And if any man sin before the Church or transgress any of these laws willingly or unwillingly, let him submit himself and give satisfaction to the Church: and if he listens not and disobeys and submits not to the orders of the Church, then let him be separated from the Church.

И за доуходни дљьг възакъ чловѣкъ да иматъ повиновѣније и послушанїе къ своемѹ архієрею; ако ли се ксто ѡбрѣте съгрѣшиње цркви или прѣстогу-
пивъ что любо што сїега законика волим али не хотѣнїемъ, да се повине и исправи се цркви; ако ли прѣчю и оудрьжи се што цркви, не възможе испра-
вити повелѣнија цркви, потвом да се штлоучи што цркви.³³

Article 5:

Bishops³⁴ shall not curse Christians for spiritual sins, but shall send twice and thrice to reproach him who has sinned. But if he will not then obey and show himself willing to carry out the order of the Church, then let him be separated.

³¹ Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, pp. 14–15; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

³² Burr, “The Code of Stephan Dušan”, p. 201; Novaković, *Zakonik*, p. 17; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

³³ Burr, “The Code of Stephan Dušan”, p. 199; Novaković, *Zakonik*, p. 9; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

³⁴ Literally *consecratores*, in Serbian text *svetiteljije*.

И светитељ є да не проклинаю христіанъ за съгрешенїе доуходовно; да пошле да вѣщи или триции къ именіи да га вѣличи; да ако не чюе и не очюде исправити заповѣдю доуходовно, потым да вѣдоучит се.³⁵

Article 14 starts a sequence of articles regulating monastic life:

Hegoumenos may not be appointed without the consent of the Church; as hegoumenos in monasteries good men shall be appointed, who will enrich the Church, the House of God.

Игуумни да се не поставляю без дѣла въ цркве. Игуумни по манастирѣхъ да се ставѣ добреи чловѣци кои те црксовъ стожи домъ божиј.³⁶

Article 15:

Hegoumenos shall live in the monasteries³⁷ according to the law and the elders shall confer.

Игумни да живѣ оу киновїах по законѣ, зговараје се старци.³⁸

Article 16:

And for 1,000 houses let there be fed in the monastery 50 monks.

И на тѣсѹщихъ кѹкъ да се храни оу манастирѣхъ .Н. Калѓнеръ.³⁹

Article 17:

And monks and nuns who are shorn and live in their own homes shall be driven out to live in the monasteries.

³⁵ Burr, "The Code of Stephan Dušan", p. 199; Novaković, *Zakonik*, p. 10; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

³⁶ Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 19; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

³⁷ The word used is *kinovija*, Greek κοινόβιον, place of common life.

³⁸ Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 19; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

³⁹ Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 20; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

И калঁдгерије и калঁдгерице које се постризато, терје живоу својих коуках; да се ижденоу и да живоу по манастирехъ.⁴⁰

Article 18:

And monks who have taken the tonsure near their native district may not live in the church, but shall go to another monastery; and food shall be given them.

И калঁдгерије кои се съ постригли топици које цркве да не живоу тезији цркве, низ да гредоу иже манастирѣ; и да им се дава храна.⁴¹

Article 19:

And a monk who abandons the habit, let him be kept in a dungeon⁴² until he return again to obedience and let him be punished.⁴³

И калоугијеръ кои сврже расе, да се дръже оу тъмници, докла се Ѡврати ѿпеть оу послашанїе и да се педеп'са.⁴⁴

Article 27:

And the Tsar's churches shall not be subject to the Great Church.⁴⁵

И цркви царските да се не подлају под цркви велїе.⁴⁶

⁴⁰ Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 20; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

⁴¹ Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 21; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

⁴² Serbian word is *tamnica*, i. e. "dark place" (prison).

⁴³ Or "do penance". The word used is *pedepsati* (in article 11 *vedevsati*), from Greek παιδευέιν, ἐπάιδευσα = to punish.

⁴⁴ Burr, "The Code of Stephan Dušan", p. 202; Novaković, *Zakonik*, p. 22; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

⁴⁵ The Great Church (*Velika Crkva*) is here the chief State Church, the Patriarchate, the Archbishop's or Metropolitan Church. In Dušan's time there were two, one in Ohrid, the other at Peć. "Tsar's churches" were, like the Greek λάζραι, monasteries of royal foundations, privileged by charters, with complete autonomy, especially in administrative and economic matters (Burr, "The Code of Stephan Dušan", p. 203).

⁴⁶ Burr, "The Code of Stephan Dušan", p. 203; Novaković, *Zakonik*, p. 27; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

Article 28:

And in all churches the poor shall be fed as is written by their founders; and should any one fail to feed them, be he Metropolitan, bishop or hegoumenos, he shall be deprived of his office.

И по въсех црквахъ да се хране оубози, како юсть описано вът ктиторъ; кто ли не оуохранъ въдь митрополитъ и вът епископъ или вът игюменъ, да се въглоучи сана.⁴⁷

Article 29:

And monks shall not live outside the monastery.

И калдигерє да не живѣ изъвънъ монастыра.⁴⁸

Article 36:

And let there be established communal rule⁴⁹ for the monks in the monasteries, according to the capacity of the monastery.

И да оуставѣ по црквахъ законъ куновицкии калдигеромъ оу монастырѣхъ, противъ како юсть кои монастырь.⁵⁰

Article 37:

Laymen may not be officials⁵¹ and Metropolitans shall not send them to priests, nor may they conduct horses of the Metropolitan from priest to priest, but the Metropolitan shall send one monk with another from priest to priest, to conduct the business of the Church, that the priests may send the revenue which they have taken from their land.⁵²

⁴⁷ Burr, "The Code of Stephan Dušan", p. 203; Novaković, *Zakonik*, p. 27; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

⁴⁸ Burr, "The Code of Stephan Dušan", p. 203; Novaković, *Zakonik*, p. 28; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

⁴⁹ Literally "cenobitic law" (*zakon kinovijski*).

⁵⁰ Burr, "The Code of Stephan Dušan", p. 205; Novaković, *Zakonik*, p. 34; *Zakonik cara Stefana Dušana*, vol. III, p. 108.

⁵¹ The word used is *eksarci*, literally "exarchs".

⁵² The word is *baština*.

И ек' гар'си қозмици да не съд, да их не посылаю митрополиг'е по попов'ех; ни да воде конь митрополиг'съх по попов'ех; разв'е да посыла митрополить калд'гюра самодроугаго по попов'ех да исправе доуходысь доуходовны да оузве ѿ поповъ, кои юсть ѿ бащине.⁵³

53 Burr, "The Code of Stephan Dušan", p. 205; Novaković, *Zakonik*, p. 35; *Zakonik cara Stefana Dušana*, vol. III, p. 108. On the legal position of the Serbian Orthodox Church, see S. Šarkić, "L'Église et la religion dans le Code d'Etienne Douchan", *Méditerranées, Revue de l'association Méditerranées*, publiée avec le concours de l'Université de Paris X—Nanterre, No. 16 (1998), pp. 129–136.

PART 4

Civil Law

∴

Natural Persons (Individuals) and Legal Persons (Entities)

1 Natural Persons (Individuals)

In modern jurisprudence the term *individual* denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation or association.

Serbian legal sources use the terms *glava* (глава, κεφαλή, *caput*, head), or sometimes *kapa* (καπά, *cap*, hood) to designate natural persons (individuals). The term *glava* can be found in two treaties with Dubrovnik concluded by Tsar Dušan (20 September 1349) and his son and successor Tsar Uroš (25 April 1357). In both we find the same formula *da gredū svoimi glavami* (да гредъ *своими главами*),¹ meaning that Ragusan merchants could freely circulate within Serbia as individuals. In article 31 of the Law Code of Stefan Dušan, on parish priests, the following expression is used “and the priest’s cap is free” (и да есть поповска ката свободна).² This means that parish priests, as natural persons (individuals), were exempt from the feudal services that commoners normally had.

Only individuals who were free had full legal capacity. Slaves (*otroci*) were owned by their masters and therefore had neither private nor public rights. However, in mediaeval Serbia there were several exemptions from that general rule (see Chapter 5, section 3).

Women possessed full legal capacity in Serbian mediaeval law (see below).

According to the Serbian legal sources it is not clear at what age full legal capacity was assumed. The charter presented by King Milutin to the monastery of Saint Stephen in Banjska says “that a widow, who has a little boy, should hold the whole village until her son is grown-up” (А сирота која имаа малा сина, да си држини в’се село до г’де је сина подрасте).³ It is clear that persons under age could not enter into formal transactions, but what was the age when natural persons (individuals) assumed full legal capacity? The so-called “Justinian’s

¹ SSA 11 (2012), p. 38; SSA 12 (2013), p. 81.

² Burr, “The Code of Stephan Dušan”, p. 204; Novaković, *Zakonik*, p. 29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

Law" in article 1 provides that full legal age was assumed at the age of 25 (λιψε βούδεται χλωβέκαις βρύστομη, καὶ λέπτη).⁴ The Serbian translation of the *Syntagma* of Matheas Blastares exposes the very complicated Byzantine system of three ages in the life of natural persons: 1) young persons (млади, ἀνηβοι) seen as not having reached puberty (14 male, 12 female) had no legal capacity, and they were under tutorship (приставъникъ, ἐπίτροπος, *tutela*); 2) individuals who had reached puberty were, nevertheless, too young to administer their affairs, and they were under *cura* (печаловъникъ, κουράτωρ, guardianship over minors) until the age of 25, either male or female; 3) a person who reached *perfecta aetas* at the age of 25 had full capacity to act on their own behalf.⁵ However, according to Byzantine law, four more years were required for establishment (օγεταμενιέ, ἀποκατάστασις) of all legal rights of an ex-minor, so that consent of a *curator* was no longer needed at the age of 30.⁶ Further, according to our remaining legal sources it is impossible to say whether those Byzantine rules were applied in mediaeval Serbia and whether full legal capacity was assumed at the age of puberty (14 male, 12 female).⁷

2 Legal Persons (Entities)

In Serbian mediaeval law it was mostly churches and monasteries that had the trait of a legal person (entity—an organization entitled to acquire and enjoy rights and duties, particularly considering their property). Beside them, towns, villages, counties and districts also had some characteristics of legal persons.

Serbian monarchs gave lands and estates to churches and monasteries and that way they became subjects of property rights. To designate ecclesiastical entities Serbian legal documents use different terms. For example, in the

⁴ Edited by Marković, p. 53.

⁵ Novaković, *Syntagma*, p. 308. Greek text edited by Ralles and Potles, pp. 293–294.

⁶ Novaković, *Syntagma*, pp. 144–145.

⁷ According to the opinion of Taranovski, *Istorija*, vol. III, p. 7, it is not possible to suppose that such a complicated system could have been applied in mediaeval Serbia, because of the simplicity of Serbian society. It is much more likely that the legal age was assumed at the age of puberty. As the argument for his opinion, Taranovski adds that all rules on legal age were omitted in the abridged version of the *Syntagma*. See also S. Šarkić, "O sticanju poslovne sposobnosti u srednjovekovnom srpskom pravu" [On the Acquisition of Legal Capacity in Serbian Mediaeval Law], *ZRVI* 43 (2006), pp. 71–76. The same paper, with some amendments, has been published in Italian as well: "Sull'acquisizione della capacità di agire nel diritto medievale serbo", *Diritto e Storia, Rivista internazionale di Scienze Giuridiche e Tradizione Romana*, no. 6 (2007), pp. 1–6.

chrysobull issued between 1303 and 1331, King Milutin says that he gave everything to the church of the Holy Virgin in Hilandar (*И сии в'са љаже придаља краљевство ми цркви Светыје Богородице Хилан'дар'ске*).⁸ The same term—“church” (*црква*, *crkva*) can be found in the chrysobull of Tsar Stefan Dušan from 1346: “Let that all have the church of Saint Stephen” (*да има цркву Светаго Степана*).⁹

In some legal documents the term *hram* (*храмъ*) = temple, shrine (for example, the Holy Shrine of Saint Nicholas in Vranjina, the Shrine of Holy Virgin in Hilandar, the Shrine of Saint Protomartyr Stephen in Banjska, etc.) was used instead of the word *crkva* (church).¹⁰ However, most frequently we find the term monastery (*манастиръ*, *монастыръ* or *настасија*, *manastir*). Already the Great Župan Stefan Nemanjić, in his charter to the monastery of Hilandar (1199–1208), says that he gave villages to the monastery (*И даљь села монастироу*).¹¹ The monastery of Saint Stephen in Banjska, the monastery of Saint George near Skoplje, the monastery of Saint Nicholas Mrački, the monastery of Holy Virgin in Htetovo, the monastery Treskavac, and many others,¹² are mentioned in the same fashion (as legal persons). However, one could note that the name monastery is often replaced with the term church. In Serbian legal documents, Hilandar, for example, is called equally a church and a monastery.

To designate legal persons Serbian monarchs sometimes used figurative expressions, saying that they had given estates to the eponymous saint of the monastery, so *the saint* has a feature of a legal entity. We shall quote a few examples: King Stefan Vladislav writes between 1234 and 1237 that he gave a village of Branike to the Most Pure Virgin (*ІА Стефанъ Владиславъ, съ помоцию Божијеју краљ ... придаљъ то село Врапиќе Прѣчистој Богородици*).¹³ King Stefan Dušan (1343–1345) says that he gave a small gift to the Most Pure Mother of God from Hilandar (*Темже и азъ въ Христа Бога вер'ни Стефанъ д., по милости Божијеји краљ срп'скихъ и помор'скихъ земљи и честъникъ Грыкомъ ... принесохъ мали си даръ ... прѣчистој матери Божијеји Хилан'дарској*).¹⁴ Tsar Dušan writes (1354–

⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 382.

⁹ Novaković, *Zakonski spomenici*, p. 631, para. IV.

¹⁰ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 62, 82, 91, 94, 127, 162, 163, 197, 230, 250, 251, 254, 261, 317, 396, 428, 439, 440, 442, 458, 468, 471, 486, 501, 503, 529, 541, etc.

¹¹ Ibid., p. 83.

¹² Ibid., pp. 62, 69, 73–76, 82, 83, 94, 109, 115, 116, 166, 167, 192, 233, 251, 254, 268, 303, 308, 313, 314, 317, 332, 380, 382, etc.

¹³ Ibid., p. 148.

¹⁴ SSA 4 (2005), pp. 70, 71.

1355) that he gave estates to Saint Nicolas (И сиє приложи царство ми светомоу Николѣ).¹⁵

In some legal documents the entity of a church or monastery was expressed as the home (*домъ, domus*) of a certain saint. For example, “the home of the Holy Virgin from Hilandar” (домоу Светынѣ Богородице Хилян’дар’скынѣ),¹⁶ “the home of Our Almighty (Pantokrator) Lord” in Dečani (Науеъхъ здати домъ господеви Богоу моемоу Пан’дократору),¹⁷ “the home of the Savior, of the Orthodox Patriarchs of Our Fatherland” (Такожде и въ Домоу Спасовѣ, превославиѣи патріархїи штъчства нашего),¹⁸ “the home of the Holy Virgin in Ston” (Домоу Светынѣ Богородице оу Стонѣ),¹⁹ etc. It is evident that the figure of the saint expresses the concept of churches and monasteries as institutions, i.e. legal persons (entities).

According to the opinion of some authors, towns also had the feature of legal persons.²⁰ The arguments of those historians are based on two articles of the Law Code of Stefan Dušan and two charters. First, article 124 is as follows: “Greek towns which the Lord Tsar hath taken, whatsoever charters and decrees have been granted to them, whatsoever they have and hold up to the time of this Council, let them hold, and it is confirmed to them and let no man take anything from them” (Градовѣ гръчыцї коехъ юстъ прїель господинъ царь, цю имъ юстъ оучинилъ, хрисовѣлкъ и простаг’ме цю си имаю гдѣ и дръже до сїегазїи събора, тозїи да си дръже и да имъ юстъ тврьдо и да им се не оузмѣ ницио).²¹ This means that towns conquered from Byzantium (“Greek towns”) possessed real or immovable property. Likewise in article 137 we find general confirmation of all chrysobulls granted to the towns.²² One can conclude that the towns were treated as legal persons (entities) enjoying absolute ownership on their lands. To support such a statement we shall quote two charters of Serbian monarchs: in the first charter Serbian King Stefan Radoslav (24 July 1230) confirms to the maritime town of Kotor all its property rights and lands and vineyards (*confirmo tutti li orti et le vigne loro*);²³ in the second charter Tsar Dušan confirms

¹⁵ Ibid., p. 138.

¹⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 441.

¹⁷ Ivić and Grković, *Dečanske hrisovulje*, p. 75.

¹⁸ ssa 7 (2008), p. 77.

¹⁹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 196.

²⁰ For more details see Taranovski, *Istoriјa*, vol. III, pp. 25–26.

²¹ Burr, “The Code of Stephan Dušan”, p. 521; Novaković, *Zakonik*, p. 95; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

²² See Chapter 6, section 3.

²³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 120. The charter was preserved only in Italian translation.

(1346–1355) the property rights of the same Kotor town (*Et Io Steffano per la gratia de Dio Imperador de Sclauonia, et de Romania ... sacramentali de obseruar à ciascadun le lor terre, et Priulegij, et patrimonij, et confirmarli tutti, et maiormente alii zentihuomeni de Catharo per la lor vera fede, et honoreuol merito, et seruisio meritado à li nostri antecessori, et specialmente al nostro imperio*).²⁴

The abovementioned documents refer only to the Byzantine (Greek) and maritime towns as legal persons. What was the situation regarding towns in the interior of Serbia? The Law Code of Stefan Dušan (article 126) mentions “urban land around the town” (Грдја земља цио је укоко грдја),²⁵ but we do not have any proof that the land was in the absolute ownership of the town. Anyway, it is very hard to say whether towns in Serbia were considered as legal persons, because we have very little information in the sources.

We have much more data regarding villages as legal persons (entities) and subjects of property rights. Article 74 of the Law Code of Stefan Dušan provides that villages have the right to pastures: “Let village pasture with village, where one village, there also the other. Only legal enclosures and meadows may not be grazed” (Село сељам да пасе; коудје једно село тоудји и дроуго; развѣ засеље законитых, и ливадъ законитых никто да не пасе).²⁶ However, it is not clear whether the villages had ownership of the pastures or had only a servitude. Article 79 provides: “But if villages dispute between themselves touching land and boundaries, let them sue by the Law of the Sainted King²⁷ from the time of his death” (А за мегре и за земљу, цио се потвадрајо села мегю цвомъ, да иците соудомъ ут светаго краља къди се је представиљ).²⁸ So, the villages could be either plaintiff or defendant in a lawsuit, which proves that they were considered legal persons in civil law cases. If they had no property rights on their land, villages could not have had any judicial claim.

According to article 75 of the Law Code of Stefan Dušan we can conclude that counties or districts (*župe*) had some rights to pastures, as well: “No dis-

²⁴ Edited by S. Ćirković, “Povelja cara Stefana Dušana o granicama Kotora” [“Charter of Emperor Stefan Dušan concerning the Limits of Kotor Town”], SSA 10 (2011), p. 40. The charter survives only in an Italian translation from the 15th century. There is another charter of Tsar Dušan to the City of Kotor (1351). The Cyrillic transcript of this charter from the 17th century was edited by Novaković, *Zakonski spomenici*, pp. 31–32.

²⁵ Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 97; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

²⁶ Burr, “The Code of Stephan Dušan”, p. 212; Novaković, *Zakonik*, p. 59; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

²⁷ “The Sainted King”, in the Code, always means King Milutin, Dušan’s grandfather.

²⁸ Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, p. 63; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

trict may graze its stock within another district. And if in the district there be a separate village which belongs to any lord, or to my majesty, or is a Church village, or belongs to a gentleman, that village shall graze with the rest of the county district and no man shall forbid it to so graze" (Жоупа јоупѣ да не попаса добит'комъ ница; ако ли се наиде једно село ё този жѹпѣ, оу кога любо властѣлна, или јесть царства ми, или јесть црквено село. Или властѣличика; шномѹзи селѹ никто да не забрани пасти; да пасе коудѣ и жоупа).²⁹ However, this is not sufficient to assert that counties and districts in mediaeval Serbia had features of legal persons (entities).

Legal persons (entities) administered their affairs and effected their rights through their legal agents. The Serbian legal sources give us information only on churches and monasteries as legal persons. The legal agents of monasteries were their superiors (*игоуменъ*, *игоумнъ*, *јегоуменъ*, *ђугоуменос*, *hegooumenos*)³⁰ who could enter into formal transactions in the name of a monastery or a church. However, a monastery superior could perform important legal acts only with the consent of elder monastery brothers. This was clearly written in Tsar Dušan's charter to the monastery of Saint Archangels Michael and Gabriel (1348): "And the monastery superior can do or give nothing without agreement with *oikonomos* and *bašta* [father] and *ekklesiarches* and *docheiarios*" (И да нѣ волњи игоумнъ ница ћадати ни очинити без ћговора иконома и баџе и еклисиарха и дохиара).³¹ The sale of monastery land could be performed with the agreement of the whole monastery community (И ћговориш се съ кралевством ми вся братија иже въ манастири Светыи Еогородице Хилан'дар'скыи).³²

Article 35 of the Law Code of Stefan Dušan explicitly states that the superior is the legal agent of the monastery: "And my majesty has granted to the hegoumenes their churches, that they be rulers of their goods, both mares and horses and sheep and everything else and that they may do with them whatsoever is deemed suitable and appropriate and lawful, and as is written in the chrysobulls of the holy founders" (И прѣдаде царство ми игоуменомъ цркви да вѣладаю вѣсмъ коуксмъ, кобиламъ и кон'ми, и ов'цамъ, и инемъ вѣсмъ и въ вѣсмъ да сѹ вол'нии, цо јесть прилично по постѣ и по правдѣ, и како пише христовоуљ светихъ ктїгоръ).³³ A superior had to be appointed with the con-

²⁹ Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 60; *Zakonik cara Stefana Dušana*, vol. III, pp. 118, 120.

³⁰ See M. Janković, "Iguman", in *LSSV*, pp. 247–249.

³¹ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 111.

³² King Milutin's treaty with the Council of the Hilandar monastery (between 17 May 1317 and 29 October 1321), edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 517.

³³ Burr, "The Code of Stephan Dušan", p. 205; Novaković, *Zakonik*, p. 33; *Zakonik cara Stefana Dušana*, vol. III, p. 108.

sent of the monastery community, and the superiors had to be honest persons (article 14): "Hegoumenes may not be appointed without the consent of the Church; as hegoumenes in monasteries good men shall be appointed, who will enrich the Church, the House of God" (Игу́мни да се не поставляю без дела ут цркве. Игу́мни по манастирбъ да се става добрии чловеци, кои те црковь стожити Домъ Божи).³⁴ Finally the Law Code orders (article 15) that superiors perform legal acts with the consent of the community: "Hegoumenes shall live in the monasteries according to the law and the elders shall confer" (Игу́мни да живе оу куновіах по закону, зговаряю се сь старци).³⁵

Dušan's Law Code did not, however, issue the rule that a monastery's land could be sold only with the common agreement of the whole monastic community. This gap in the law could be explained by the fact that the sale of monastery lands in practice was very rare. In a case when a monastery wanted to sell its land, it should have obtained a special confirmation of a monarch, that was to be written in the separate charter.

34 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 19; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

35 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 19; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

The Law of Property

1 The Concept of a “Thing”

The Serbian mediaeval law of property was concerned essentially with things (*res*), their acquisition, and their transfer. The things (*res*) were considered as objects and as rights in objects that had economic value. However, Serbian mediaeval law does not abstractly use the idea of a thing (*stvar, смвар* in Serbian). In every case, the Serbian legal sources quote and name any single thing that was the object of the transaction.

The oldest expression used to designate property was *dobitak* (добитъкъ, добитак). Literally, the word means “gain”, “asset”, but in the legal documents from the 13th and 14th centuries, the term was primarily understood as “cattle”, “livestock”, which was considered the most primitive form of man’s fortune.¹ Such a concept could be clearly seen in King Dušan’s charter presented to the Ragusans (Dubrovčani) concerning the customs of servant (слуга)² Dabiživ, from 26 October 1345, where the duty “on cattle [dobitak] which goes to Dubrovnik” (и юд добитка кои греје Ѹ Дубровникъ) was mentioned.³ In the same meaning, the word *dobitak* was used in King Dušan’s charter giving the church of Saint Nicolas in Vranje to the monastery of Hilandar (1343–1345): “And what the cattle graze” (И ѹко пасъ добитъкъ).⁴ The code of Stefan Dušan in article 75 says: “No district may graze its stock within another district” (Жоупа жоупъ да не попаса добит’комъ ница).⁵ However, in 13th-century documents, *dobitak* also began to designate the abstract idea of property. For example, when Ragusan Doge Johannes Dandulus confirms his friendship with the Serbian King Stefan Vladislav (September 1234–April 1235), he says that the King can freely enter and leave Dubrovnik (Ragusa) with “all his property” (ни добытъкъ твоемъ всакомъ; ни добытъкомъ имъ; и съ добытъкомъ всакымъ твоимъ и ѿнъхъ добытъкомъ всакимъ; А добитъкъ ере смо ресли дати).⁶ In the treaty from

¹ See Đ. Tošić, “Dobitak”, in *LSSV*, pp. 160–161.

² On the duty of servant (*sluga*), see Chapter 5, section 2.2.

³ Edited by N. Porčić, *ssa* 5 (2006), p. 84. On the personality of Dabiživ, see pp. 92–94.

⁴ Edited by S. Marjanović-Dušanić, *ssa* 4 (2005), p. 73.

⁵ Burr, “The Code of Stephan Dušan”, p. 212, Novaković, *Zakonik*, p. 60; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

⁶ In the Latin version of the document *dobitak* is translated as *habere* (*alio vestro habere, toto habere vestro*). Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 135.

1282, King Stefan Uroš II Milutin says that the Ragusans (Dubrovčani) can “leave [Serbia if they do something wrong to the King] within three months with all their property” (да имъ ест рокъ за три мѣсце да си изидоутъ съ всѣмъ своимъ добитъкомъ).⁷ King Stefan Uroš I says, in the treaty from 23 August 1254, that if any Ragusan won a suit with a Serbian “let my judges deliver him his property” (да мѹе сѹдьцє издаю добитъкъ).⁸

In several cases, Serbian legal sources differentiate between *živi dobitak*, literally “live gain”, “live asset”, i.e. cattle, livestock, and *mrtvi dobitak* (и добыт'ка живога и мр'твога), literally “dead or inanimate gain”, i.e. immovable things.⁹ Tsar Dušan in the general chrysobull presented to the monastery of Hilandar (1348) says that he gave the tenth part of “live gain” (i.e. cattle, livestock) to the monastery, that was in money terms 400 silver perpers (и приложис'мо ѿть всега добит'ка живога цо се находитъ оу царьства ми десетъкъ всако годище ће да си оузимаю за тъль десетъкъ всако годище, на Георгев дънь лѣтніи 8 Новомъ Бърдѣ сребра за четири тисоуга кръстгатихъ перперъ).¹⁰ However, article 144 of Dušan's Law Code calls the whole property of an individual “his house and his cattle” (на неговѣ коукю и на єговъ добитъкъ), where the word *kuća* (lit. “house”, “home”) could designate immovable property, and *dubitak* all movable things, not only cattle.¹¹

The term which most frequently designates all property is *imenije* or *imanije* = property, holding, estate, homestead (from verb *imeti* or *imati* = to have).¹² In Serbian legal documents *imanije*, as the object of property rights, is often opposed to the *glava* (lit. “head”), as the subject of legal acts (natural persons, individuals). That is clear from two treaties of Serbian monarchs with Dubrovnik (1349 and 1357) where the same formula has been repeated: “And that they [Ragusans] circulate within my Empire with their heads [as individuals] and their property ... freely, without any disturbance”¹³ (Да гредѣ своими главами, иманиемъ своимъ ... свободно, безъ всаке забавѣ по земли царьства ми).¹⁴ Dušan's Law Code uses the term *imanije* as well, designating all property

⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 276.

⁸ Ibid., p. 213.

⁹ King Milutin's charter to the Hilandar's pyrgos (tower) in Chroussia (1313?–1316, before 26 July). Ibid., p. 441.

¹⁰ Edited by S. Mišić and M. Koprivica, *ssa* 14 (2015), p. 68.

¹¹ Burr, “The Code of Stephan Dušan”, pp. 525–526; Novaković, *Zakonik*, p. 111; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

¹² In modern Serbian *imanje* (имање).

¹³ The Serbian word is *zabava* (забава), meaning in modern Serbian *amusement, entertainment*. However, in mediaeval Serbian legal documents *zabava* means *disturbance, interference, nuisance*. See S. Bojanin, “Zabava”, in *LSSV*, p. 201.

¹⁴ Tsar Dušan's treaty from 20 September 1349, edited by D. Ječmenica, *ssa* 11 (2012), p. 38; Tsar Uroš's treaty from 25 April 1357, edited by M. Černova, *ssa* 12 (2013), p. 81.

(all movable and immovable things). Article 70, regulating the division of family estates, mentions “brothers or father or sons, or any other, independent by bread or property” (или братен’ци, или штыць ѿ сыновъ или инь ктo ѿдѣльнъ хлѣбомъ и иманіемъ).¹⁵

2 Division of Things

Roman law had a very detailed division of things,¹⁶ but among the sources of Serbian mediaeval law, only one fragment in the *Syntagma* of Matheas Blastares mentions the Roman division between *res mobiles* and *res immobiles* (movable and immovable things). The text is an interpretation of Justinian’s *Novella* cxxxI, 13, which forbids bishops who had acquired movable or immovable property after ordination as a bishop from transferring them to their relatives (Отрицаємъ, рече, прѣподобишиими епископомъ іаже по епископствѣ тѣмъ которимъ любо образомъ пришьдша имѣнїа, движима или недвижима, въ своє съродники или къ инымъ, которимъ любо образомъ прѣносити).¹⁷ However, in the original Greek text of Justinian’s *Novella* and Matheas Blastares’ *Syntagma*, beside the division on movable and immovable things (πράγματα κινητὰ ἢ ἀκίνητα) we also find the idea of a selfmovable (αὐτοκίνητα) thing, which was omitted in the Serbian translation.¹⁸ Although the Serbian translators of the *Syntagma* did not mention selfmovable things, they were present in Serbian legal sources as *živi dobitak* (live gain, live asset, i.e. cattle, livestock). That is clear from the beginning of article 117 of Dušan’s Law Code: “If anything come to any man in the Tsar’s realm out of some city or other district which belonged to some other lord before the Tsar took that land or county” (Цю јестъ комѣ прѣшло Ѹ царевѣ землю, или из’ града, или и жѹпѣ које до прѣетїа господина цара дѹгдѣ нѣсть било царево, нѣ є било иного гospодаря).¹⁹

¹⁵ Burr, “The Code of Stephan Dušan”, p. 211; Novaković, *Zakonik*, p. 57; *Zakonik cara Stefana Dušana*, vol. III, p. 118. Cf. Taranovski, *Istorija*, vol. III, pp. 28–29.

¹⁶ Gaius, *Institutiones* II, 1–22; *Iust. Inst.* II, 1, 1–48 (*De rerum divisione*); D. I, 8, 1–11 (*De divisione rerum et qualitate*). Cf. A. Malenica, “Podele stvari i pojam ‘stvar’ u rimskoj pravnoj doktrini” (“Classification of Things and the Concept of a ‘Thing’ in Roman Legal Doctrine”), *ZRPFNS* 40.1 (2006), pp. 19–51.

¹⁷ Edited by Novaković, p. 216.

¹⁸ Edited by Ralles and Potles, p. 207. Cf. *Cod. Iust.* VI, 61, 6; VII, 37, 2; VII, 37, 3; and IX, 13, 1, which mentions *res mobiles vel immobiles seu se moventes*.

¹⁹ Burr, “The Code of Stephan Dušan”, p. 519; Novaković, *Zakonik*, p. 90; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

Roman law recognized a division of things vested in private ownership (*res in nostro patrimonio*) and things not owned privately (*res extra nostrum patrimonium*).²⁰ Aelius Marciarus, a Roman lawyer of the early 3rd century AD, used for *res in nostro patrimonio* and *res extra nostrum patrimonium* the expressions *res in commercio* (things in trade) and *res extra commercium* (things out of trade),²¹ and his terminology prevailed into modern law. In Serbian mediaeval law we cannot find such a division, but the legal documents mention some objects that could be *res in commercio*. Those objects were mostly churches, built by natural persons (individuals)—noblemen and clergy, who were landlords and had hereditary estate (*baština*) over their manors. Churches on private estates were the property of their owners and could be things in trade (*res in commercio*). We shall quote several examples.

In the chrysobull presented to the monastery of Saint Archangels Michael and Gabriel near the city of Prizren (1348), Tsar Stefan Dušan confirms that the church, built on the manor of the nobleman family Vladojević, was their hereditary estate (да си држе въ мѣсто сегази оу баџинѹ). As the church was a hereditary estate (*baština*) it could be an object of trade (*res in commercio*). So the Tsar, with the consent of Mladen Vladojević and his mother, not by force, changed the church for another church (И симъ вбрадзомъ замѣнихъ црквь Спаса оу Младѣна Владојевиця и оу матерє юго ... нихъ воломъ и нихъ хотѣниемъ, а не нѣкою поуждею, замѣнихъ и дахъ замѣну оу Охридѣ Ап'дричю црквь за црквь).²² Tsar Stefan Dušan bought a place called Livade and the church of Saint Nicholas on the peninsula of Athos and gave them as a present to the monastery of Hilandar (1 December 1347).²³ In Tsar Stefan Dušan's charter to the lesser lord (*vlasteličić*) Ivanko Probištitović (28 May 1350), the Serbian monarch says that Ivanko can freely dispose with the church of Saint John that he built on his estate. Ivanko and his children can sell the church, give it as a present or give it for the soul,²⁴ as they wish (ѡнѣзи црквь кою си јећь създаљ Светаго Івана ... да си има и држи Иванко и негова дѣца до вѣка въ всако ѡтврѣжденије и достојаније царско и свобододѣ чистѣ. Како всако кѣпенијѣ люби за дѣшѣ подъ црквь записати, люби комо ћаризати кѣде мѣ јећь хотѣније).²⁵

²⁰ *Modo videamus de rebus; quae vel in nostro patrimonio sunt vel extra nostrum patrimonium habentur* (Gaius, Inst. II, 1; Just. Inst. II, 1, 1 praef.).

²¹ D. xx, 3, 2.

²² Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 89.

²³ Novaković, *Zakonski spomenici*, p. 417.

²⁴ The formula “given for the soul” (за дѹшоу ѹдати) in Serbian mediaeval law corresponds to the capacity to make a will. See further Chapter 14, dedicated to the “Law of Wills and Succession”.

²⁵ Edited by V. Aleksić, *ssa* 8 (2009), p. 73.

It seems that Serbian mediaeval law recognized a division between *res corporales* (physical, corporeal things, i.e. tangible objects) and *res incorporales* (non-physical, incorporeal things, i.e. right to which an economic value attaches).²⁶ In the charter presented to Saint George's monastery near the city of Skoplje (1300), King Stefan Uroš II Milutin says that he gave to the monastery the village of Kozarevo and the monastery of Saint John Chrysostom and Barovo and Vinsko with all hamlets, vineyards, fields, watermills and beast- and fish-hunting grounds, with enclosures,²⁷ and mountains and all the rights of those villages (И приложи каrlјевство ми село Козареву ... а въ икъ монастырь Светы Іоанъ Златоустычани, съ Баровомъ и съ Винскомъ и съ всѣми заселки тѣми и съ Златоустычани, съ виногради, съ нивиемъ, съ водѣничиемъ, и съ ловищемъ рибнимъ и звѣрнимъ, съ засѣлами и съ планиномъ и съ всѣми правинами сель тѣхъ). The King adds that he gave to Saint George's monastery the village of Čereševljani as well, with all its property and all its rights (и съ всѣми правинами).²⁸ King Dušan's charter presented to the monastery of Treskavac (1335) testifies that the object of trade was the church of Saint Nicholas in the village of Hlerine, sold by Vlach's bishop, with all men, vineyards, fields, and watermills, and with all regions and rights (Црква оу Хлеринѣ светии Никола, чю продаде влашки пискоупъ, съ людьми, и съ виногради, и съ нивиемъ и съ водѣничиемъ и съ вѣсю облостию и правинами).²⁹ Almost the same words were used in Tsar Stefan Dušan's charter issued in favour of Karyes (Καρυές) Kellion in Holy Mountain (1348): beside the physical things the Tsar said that he gave all rights that the village of Kosoriće disposed (и съ всѣми правинами села тога).³⁰

The expression *и съ всѣми правинами* ("and with all rights") was the translation of the Greek phrase *μετά τῶν δικαιῶν καὶ προνομίων* ("with all rights and

²⁶ Gaius, *Institutiones* II, 12–14: *Quaedam praetera res corporales sunt, quaedam incorporales. Corporales hae sunt quae tangi possunt, velut fundus homo vestis aurum argentum et denique aliae res innumerabilis. Incorporales sunt quae tangi non possunt, qualia sunt ea quae iure consistunt, sicut hereditas, ususfructus, obligationes quoquo modo contractae* ("Again, things are either corporeal or incorporeal. Things corporeal are tangible, as land, a slave, clothing, gold, silver, and innumerable others. Things incorporeal are intangible; such as those which have an existence simply in law as inheritance, usufruct, obligation, however contracted"). English translation by I.E. Poste, *Iustiniani Institutiones* (Oxford 1904). Cf. *Iust. Inst.* II, 2, 1–2 (*De rebus incorporalibus*).

²⁷ The Serbian word is *zabel* (засѣлъ), which is no longer used in the modern language. See M. Blagojević, "Zabel", in *LSSV*, p. 202.

²⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 321.

²⁹ Novaković, *Zakonski spomenici*, p. 667.

³⁰ Edited by D. Živojinović, *ssa* 7 (2008), p. 76.

privileges") usual in Byzantine charters³¹ and adopted by composers of Serbian legal acts.³² This fact was already noticed by Russian scholar Fyodor Zigelj, although he thought that the expression *i s vsemi pravinami* (и съ всѣми пра-ви-на-ми) did not mean "with all rights", but rather "with all accessory things" (*accessorium, res accessoria*), that which belong to the principal thing (*res principale*).³³

Serbian legal sources make a clear difference between the principal thing (*res principale*) and the accessory thing (*accessorium*), that which belongs to a

³¹ I shall quote several examples from the archives of Hilandar monastery: 1) June 1199, Byzantine Emperor Alexios III Angel confirms to the Serbian monk Sabba the property over the monastery of Hilandar καὶ τῶν δῶλων τούτου δικαιῶν καὶ προνομίων; 2) September 1265, John, Constantine and Michael Spartenos confirm gifts to the monastery of Hilandar, done by their father καὶ τοῖς αὐτῶν δικαίοις καὶ προνομίοις; 3) December 1304, Demetrios Philanthropenos cedes his goods Korakomone and tou Blachou in Holmyros, to the painter Michael Proeleusis, who has to build one *monydrion* dedicated to the Mother of God, καὶ πάντων τῶν δικαιῶν καὶ προνομίων αὐτῆς; 4) 5 August 1314, Demetrios Pyrrhos, his son-in-law and his son sell two plots of the vineyard in Ropalaia to the monastery of Hilandar with πάντων δικαιῶν καὶ προνομίων; 5) Theodore Mallokopos and his son sell two plots of the vineyard in Ropalaia to the monastery of Hilandar ὃν ἔχουσι πάντων δικαιῶν καὶ προνομίων. See *Archives de l'Athos xx, Actes de Chilandar I, dès origines à 1319*, ed. M. Živojinović, V. Kravari, and Ch. Giros (Paris 1998), no. 5, 24; no. 7, 22; no. 22, 5, 14, 32, 47; no. 31, 26; no. 32, 21. 1) In the charter of Byzantine Emperor Andronikos III Palaiologos (June 1321), recognizing immunity rights for the monastery of Saint Nicolas in Kamenika near Serres, founded by hieromonach Theodossios Mellissenos, we find the formula ἀλλὰ δὲ καὶ ἐτέρων πάντων δικαιῶν καὶ προνομίων; 2) August 1321, the nun Marina sells her property, situated in the city of Kaisaropolis, valued at 210 perpers, to the monks of the monastery of Hilandar, using the words μετὰ πάντων αὐτοῦ φημὶ τῶν δικαιῶν καὶ προνομίων παλαιῶν τέ καὶ νέων; 3) September 1365, Byzantine Emperor John V Palaiologos, on the demand of Serbian Tsar Stefan Uroš, offers the village of Potolino with the neighbouring lands to the monks of Hilandar μεθ' ὃν ἔχει δικαιῶν καὶ προνομίων. See *Actes de l'Athos v, Actes de Chilandar, première partie, Actes grecs*, ed. L. Petit, BB, *Приложение къ XVII тому*, no. 1 (Санкт-Петербургъ 1911), no. 64, 16–17; no. 69, 47–48; no. 150, 18. Cf. M. Živojinović, "Strumički metoh Hilandara" ("Strumica Manor of Hilandar"), *ZRVI* 45 (2008), pp. 205–221.

³² Stanojević, "Studije o srpskoj diplomatičici XX. Sastavljanje povelja" [Studies on Serbian Diplomacy XX. Composing of Charters], *Glas SKA* 157 (1933), p. 156.

³³ Zigelj, *Zakonnik Stefana Dušana*, p. 198. His opinion was rejected by Taranovski, *Istorija*, vol. III, pp. 38–39, who proved that the expression *i s vsemi pravinami* means "with all rights". Taranovski quoted King Stefan Uroš's chrysobull to the monastery of Saint Apostles Peter and Paul on the River Lim (1254–1263), where the word *pravine* was replaced with *pravila* (rules): *Аще ли ишто пакъгда въ пакоюе връме нараждениемъ и завистни днаволею коими изразъмъ въсъщоцѣть порадовъти светоу църквь и пратеворити праданына мъномъ, или въ селахъ или въ планахъ, или въ Бласахъ, или въ добитъцахъ, или въ кобилахъ, или въ земли и въ виноградахъ, правилахъ църквиахъ.* Taranovski used the edition of Novaković, *Zakonski spomenici*, p. 596. The new edition used in this text is that by Mošin, Ćirković, and Sindik, *Zbornik*, p. 230.

principal thing, or is in connection with it.³⁴ As the principal thing the sources usually indicate a village, and beside it different accessory things were quoted (see abovementioned examples). In some documents, mountains appear as the principal thing. For example, in the chrysobull presented to the monastery of Žiča (1219–1220), King Stefan the First Crowned says that he gave to the church mountains (a long list with the name of the mountains) with all pastures for use in summertime and wintertime (*А се планине ... съ всѣми пашами зими-ниими и лѣтниими*).³⁵ In King Stefan Dušan's chrysobull, confirming the gifts of his nobleman Hrelja to the monastery of Hilandar (6 May 1332), the mountains Ograždevo and Draguljevo with all fields at the foot of the mountains and with all districts were mentioned (*И планина Ограждено и Драгулево и подъпла-ниине съ всио юластию*).³⁶ However, in the charter of Tsar Stefan Uroš issued in favour of Ragusans (25 April 1357) we read a general formula: the Tsar gave them land and everything that could be found on it (*даде имъ царство ми и записа и дарова землью ... и все цло се вбреета на тоизи земли, да си има и држи градъ Дубровникъ*).³⁷

3 Ownership

Ownership is defined as a collection of rights to use and enjoy property, including the right to transmit it to others. According to the rules of Roman law, full ownership (*dominium*) gave the owner three important rights: a) *ius utendi*—the right to use the property; b) *ius fruendi*—the right to enjoy the fruits and profits of the property; and c) *ius abutendi*—the right to consume or destroy the property. However, the concept of ownership in feudal law is different: the ownership right is not unic, but rather divided. The title or property which the sovereign in feudal States is considered as possessing in all the lands of the kingdom, they being holden either immediately or mediately of him as lord paramount, was called the *dominium eminens*. The *dominium directum* (right of proper ownership) was the right of a superior or lord, as distinguished from

³⁴ According to Gaius, D. xxxii, 8, 2: *Nam quae accessionum locum optinent, extinguuntur, cum principales res peremptae fuerint* (“For those things which occupy the place of accessions are extinguished when the principal property is destroyed”). English translation by A. Watson (Philadelphia PA 1985). Modern law has adopted a rule *accessorium sequitur principale* (“accessory follows its principal”).

³⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 91.

³⁶ Edited by V. Petrović, *ssa* 13 (2014), p. 7.

³⁷ Edited by M.A. Černova, *ssa* 11 (2012), p. 94. See also S. Šarkić, “A ‘Thing’—The Concept and Division in Serbian Mediaeval Law”, *HZ* 14 (2017), pp. 47–53.

that of his vassal or tenant. The right of a vassal or tenant was *dominium utile* (useful or benefical ownership): the usufruct, or right to the use and profits of the soil, as distinguished from the *dominium directum* or ownership of the soil itself.³⁸

In mediaeval Serbian law we can find two essential concepts regarding ownership: *baština* (hereditary estate) and *pronoia* (fief). *Baština* could belong to noblemen, to the Church or to villagers (*meropsi*). The hereditary estate of a nobleman was full ownership limited by military services (*vojevanje*) and paying of a special land-tax (*soče*). The sovereign could deprive the hereditary estate holder of his manor only in a case of high treason (see Chapter 4, section 3.3).

The hereditary estate belonging to the Church had none of the abovementioned burdens, so the sovereign's supreme property right (*dominium eminens*) was only theoretical. Serbian legal sources do not mention any confiscation of Church manors (see Chapter 4, section 1.1).

Villagers had dependent hereditary estates (*baština*), carrying certain feudal duties, so their *baština* was considered as a kind of *dominium utile* (see Chapter 5, section 1).

Pronoia was a kind of *dominium directum*, different from *baština*, because the transaction of *pronoia* was not allowed (see Chapter 4, section 1.3).

4 Acquisition of Ownership

Acquisition is the act of becoming the owner of certain property. According to mediaeval commentators or annotators of Roman law, modern jurists make difference between original and derivative acquisition of ownership.³⁹

38 Cf. *Black's Law Dictionary* (St. Paul MN 1990), pp. 486–487.

39 Roman juristconsults did not make such a division. For example, Gaius, *Institutiones*, II, 65, wrote: "Therefore, from what we have stated, it appears that certain property can be alienated by natural law; as for instance, that which is transferred by mere delivery, and that other property can be alienated by the civil law, as through sale, surrender in court, and usucapitation, for these rights are peculiar to Roman citizens" (*Ergo ex his quae diximus appareat quaedem naturali iure alienari, qualia sunt ea quae traditione alienantur; quedam civili, nam mancipacionis et in iure cessionis et usucpcionis ius proprium east civium Romanorum*). So, according to Gaius, property can be acquired either *iure naturali* (by natural law) or *iure civili* (by the law of Roman citizens, i.e. civil law). In Justinian's *Digest* property is acquired *iure civili* and *iure gentium* (by the law of nations). As *ius gentium* was the law which natural reason has established among all men, Roman lawyers often equalized it with *ius naturale*. D. XLI, 1, 1: *De aquirendo rerum dominium. Gaius libro secundo rerum cottidianarum sive aureorum. Quarundam rerum dominium nanciscimur*

Original acquisition is that by which a man secures a property in a thing which is not at the time he acquires it, and in its then existing condition, the property of any other individual. In Serbian mediaeval law it may result from capturing things from an enemy, finding a thing, occupation, accession, or usucaption (lapse of time, *usucapio*).

Article 132 of Dušan's Law Code says:

If anyone in the Imperial dominion buy anything from booty taken on foreign soil, it is free to him to buy that booty provided he do so not within the territories of my Empire, but on foreign soil. And if someone accuse him, saying: "That is mine", the dispute shall be settled before a jury according to the law, whether he bought it on foreign soil and is not a thief nor a receiver nor an abettor: and such let him hold as his own.

Ције ктго коупи вт плена изъ тоугте земље, ције боудѣ плаћниено по царевѣ земли; да јесть вол'нъ коупити вт тогаји плена, колико ё тѣгши земли; ако ли га ктго потвори говорѣ инози є мое, да га упрадви порота по закону, ере је коупиль оу тѣждан земли, а не могу ни татъ, ни проводъїд, ни вѣстникъ, такози да си га има како свое.⁴⁰

As the Law Code clearly proscribes that the sale of the booty was a legal act, we can conclude that property could be acquire by looting as well. However, it remains unclear how an individual could lawfully acquire the booty. In the Serbian legal sources we have no information on that, but it is possible that some rules existed in customary law.⁴¹

On the finding of a thing speaks article 116 of Dušan's Law Code: "If any man find anything within my territory, let him not take it and say: 'I will return it if any man find out.' If any man take or seize anything, let him pay what a thief or

iure gentium, quod ratione naturali inter omnes homines peraeque servatur, quarundam iure civili, id est iure proprio civitatis nostrae ("Acquisition of Ownership of Things. Gaius, Common Matters or Golden Things, book 2: 'Of some things we acquire ownership under the law of nations which is observed, by natural reasons, among all men generally, of others under the civil law which is peculiar to our city'"). Cf. *Basilika L, 1*, ed. Scheltema, Van der Wal, and Holwerda.

40 Burr, "The Code of Stephan Dušan", p. 523; Novaković, *Zakonik*, p. 100; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

41 Taranovski, *Istorija*, vol. III, p. 85. I do not think that in Serbia there existed the following rule, defined by Gaius, *Institutiones* IV, 16, that "whatever was taken from an enemy a man considered to be absolutely his own" (*quod maxime sua esse credebant quae ex hostibus cepissent*).

robber would pay. But whosoever finds anything while in the army in a foreign land, let him bring it to the Tsar or to a commander" (*Кто що найде оу царевѣ земли; да не оузыме тере да не рече врати кю, ако кто позна; ако ли похвати, или оузыме, да плати що татъ, или гоусарь; а що найде оу тоугон земли на воинцѣ, да вѣде и несе прѣд цара, и воеводъ*).⁴² So, a finder cannot take possession of found thing if it belongs to another person.⁴³ If he do so, he will be punished like a thief or a robber. According to Teodor Taranovski⁴⁴ article 116 abolished the Old Slavonic custom which says that the owner of the lost thing had to announce at the market-place that he had lost the thing. Only in that case could he freely take his object if he recognized it in the possession of someone who had found it. The finder of a thing had to pay a fine and return the object to the owner,⁴⁵ without using a special process of inquiry called *svod* (сводь).⁴⁶ So, Dušan's Law Code was trying to stop the previous practice, which allowed the finder to keep with impunity the object, expecting that the owner will recognize it. That was the reason why the Code repeats the old formula "I will return it if any man find out", which could be used by a finder; by these words he has addressed his neighbours when he was taking the finding object to his home. However, Taranovski has noticed that article 116 does not say what the finder of a thing has "positively" to do. According to him,⁴⁷ this lacuna could be filled with article 134 of the Budva Statute, entitled *De cosa trovata* (On finding a thing).⁴⁸ It runs as follows:

⁴² Burr, "The Code of Stephan Dušan", p. 519; Novaković, *Zakonik*, p. 89; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

⁴³ Ownership could be acquired only on so-called *res nullius* (the property of nobody). The rule was defined by Roman jurist Gaius, by the following words: "What presently belongs to no one becomes by natural reasons the property of first taker" (*Quod enim nullius est, id ratione naturali occupanti conceditur*). D. XLI, 1, 3.

⁴⁴ Taranovski, *Istorija*, vol. III, pp. 85–86.

⁴⁵ See articles 34 and 35 of the Russian statute-book from the 11th century called *Russkaya Pravda* (Правда Руysкая or Правда Руская, lit. "Russian Justice"), so-called "Vast (Пространная) Version", *Памятники русского права* [Sources of Russian Law], ed. S.V. Yushkov, vol. I, *Pamyatniki prava Kievenskogo gosudarstva, X–XII vv.* [Legal Sources of Kievan Rus, X–XII Centuries], ed. A.A. Zimin (Moscow 1952), p. III.

⁴⁶ *Svod* (from verb *svoditi* or *svesti* = to lead down, guide down, bring down) was the Old Slavonic custom which means a special process of inquiry in cases of disputed ownership and charges of theft, especially of livestock. The accused party was called upon to give an account of his possession of the animal, and from whom he had originally acquired it; that person was then sent for and interrogated, and so on, until the whole history of the animal was traced back, and the existence, or otherwise, of theft finally proved. For more details see Part 6.

⁴⁷ Taranovski, *Istorija*, vol. III, p. 86.

⁴⁸ Article 116 of Dušan's Law Code has a title *Оу жефтели* ("On finding").

We order, if any individual finds somebody else's thing, he has to announce it through judicial assistants to the judges, and it must be proclaimed in the market-place that the thing was found. Whoever acts contrary and the thing be found in his possession, it will be treated as stolen and he will have to pay the fine.

Ordinemo, che se alcuna persona trovasse cosa strania, la debba far preconizar per il senicio et vataco avanti li giudici, et per la piazza cridar, tal cosi si attrovà. Chi facesse il contrario, et fosseli presa la cosa, le sia rappresentata per furto, et paghi la pena.⁴⁹

The old rule, concludes Taranovski, was replaced with the new one; the source could have been the more advanced legal system of the maritime towns, such as Budva.⁵⁰

Occupation (*occupatio*) is the acquisition of ownership by taking possession of a thing not previously owned, such as a wild animal, or a thing which has been abandoned by its owner.⁵¹ The most often means of occupation in mediaeval Serbia was the case when someone clears a forest, and after that the clearing belongs to him. Cleared land was called *laz* (λαζъ),⁵² and the verbs *trebiti* (тρъбити), *rastrebiti* (ραзтρъбити) and sometimes *rastežiti* (растежити) were used for forest clearance. Serbian charters mention *laz* many times. For example, in King Uroš's chrysobull to the monastery of Saint Peter and Paul on the River Lim (1254–1263), *laz* was noted two times as a topographic unit (ѡтъ

⁴⁹ Statuta Buduae, cap. 134.

⁵⁰ Taranovski, *Istorija*, vol. III, p. 86. The opinion of Taranovski was accepted by Solovjev, in his latest work *Zakonik cara Stefana Dušana*, pp. 271–272. However, as Bujuklić, *Pravno uredenje srednjovekovne budvanske komune*, p. 119, note 326, remarks, the question is what was the source of article 134 of the Budva Statute. L. Margetić, *Srednjovjekovno hrvatsko pravo—stvarna prava* [Mediaeval Croatian Law—Law of Things] (Zagreb-Rijeka-Čakovec 1983), pp. 38sq., points out that the dispositions on finding of movable things were regulated in the same way by the statutes of many Istrian towns (today in Croatia), such as Umag, Dvigrad, Buje, Buzet, Oprtalj, Bal, Milj etc. The author says that the purpose of this procedure was that the finder, by his behaviour, makes known to everyone that he has no intention of keeping somebody else's thing, i.e. that he is not a thief. Further on, Margetić compares those dispositions with the rules of Roman law (D. XLVII, 2, 43 and *Sabinus, Libri iuris civilis secundo ap. Aul Gell.* XI, 18, 21).

⁵¹ According to Gaius, D. XLI, 1, 1: "So all animals taken on land, sea, or in the air, that is, wild beasts, birds, and fish, become the property of those who take them" (*Omnia igitur animalia, quae terra mari caelo capiuntur, id est ferae bestiae et volucres pisces, capientium sunt*).

⁵² The word *laz* is obsolete today. In modern Serbian the term *krčevina* (крчевина) is in use. See R. Mihaljić, "Laz", in *LSSV*, pp. 360–361.

границе оу границю пры церю на конь лаза посрядја Српнијака ... шть границе оу границю медю лазома на Велеиен плочи на Живицију).⁵³ Tsar Dušan, in his charter in favour of Karyes Kellion on Holy Mountain (1348), says that he gave to the Kellion the village of Kosoriće, with all lands and rights, including clearings (и с лази).⁵⁴ However, King Stefan Dečanski's charter to the Episcopacy of Prizren (April 1326) orders that church villagers have to clear the forests, as much they can, but the clearing does not belong to them, but rather to the church (и колико је оузмож'но людемъ црковнымъ да си чине лазе, и все що је к'то чини лазе на нихъ земли да си не има светла црквијако и ино нивије црковно).⁵⁵ Besides that, monastery serfs had to ask their lord for permission to acquire land by clearing, as the charter of Tsar Dušan and his son King Uroš presented to Jacob, Metropolitan of Serres, testifies: И нико безъ хотбнија митрополитова да не треби лаза на земли на црков'нои.⁵⁶

German miners ("Saxons", *Sasi*), who were engaged in mining and metallurgy, had cleared forests and squatted in the same way as the original Serbs. Dušan was determinated to stop this (article 123 of the Code), though at the same time allow them such timber as they needed for fuel or construction work (see Chapter 7, section 2).

Accession (*accessio*) is a general term for the acquisition of ownership by joining property to or merging it with something already owned by the acquirer.⁵⁷ In mediaeval Serbian law, accession appears only as a right to acquire the fruits of land: if someone sows or plants something on the owner's land, without agreement with the owner of the field, all fruits will belong to the owner of the land. This is clear from one fragment from King Milutin's charter presented to the monastery of Saint George, near Skoplje: "If someone, without a blessing of a hegoumenos, ploughs up or plants something on the church's land, let him pay 21 perpers, and grain and fruits will take the church" (Ако ли безъ игоумнова благословљенија нивоу пошре или вртъ оучини на црковной земли да плати оу царину вl. перьперь, а вртъ и жито да оузме црква).⁵⁸ In Tsar Dušan's treaty with Dubrovnik (20 September 1349), we read as follows: "If they [Ragusans] took a piece of my Imperial land, out of boundaries that existed in the time of my father and my forefather, the Sainted King, and if they even plant vineyards on that land, they have to return all to me" (И що вѣдѣ прѣзели землю

53 Mošin, Ćirković, and Sindik, *Zbornik*, p. 229.

54 Edited by D. Živojinović, *ssa* 7 (2008), p. 63.

55 Edited by S. Mišić, *ssa* 8 (2009), p. 16.

56 Edited by G. Bojković, *ssa* 15 (2016), p. 94.

57 Cf. Gaius, *Institutiones* II, 72–75, 77.

58 Mošin, Ćirković, and Sindik, *Zbornik*, p. 327.

ЦАРСТВА МИ И ПРВЗ МЕГЮ КОЈА ЈЕСТЬ БИЛА МЕГІА Ђ РОДИТЕЛА И ПРАРОДИТЕЛА ЦАРСТВА МИ, СВЕТАГО КРАЛІА, АКО ВѢДѢ И ВИНОГРАДЕ ПО НІЕИ НАСАДИЛИ ПРВЗ МЕГЮ В'СЕ ДА МИ ПОВРАТЕ).⁵⁹ This means that the owner of the land acquires ownership not only of the fruits, which are an accession to the principal thing, but on the whole farmland. The same rule could be found in article 25 of the so-called “Justinian's Law”: “If someone sows somebody else's field, without enquiry, let him stay without seeds and without ploughing” (Аще ктo посѣть чуждоу нивоу безъ оупроса, да јест лих и сѣмена и враниѧ).⁶⁰ The influence of Byzantine law is evident.

Usucaption (*usucapio*) is the acquisition of ownership by possession of property for a specified period of time and under certain conditions, for example, that the possession was in good faith. In Serbian mediaeval law only the Church could acquire ownership by lapse of time (*usucapio*). The evidence for this is given to us by Saint George's charter:

Everything that could be found within the abovementioned boundaries, either someone's hereditary estate, or estate aquired by purchase, or vineyard, or mill, or field, or mowed hay, or gardens, or orchard, or water-mills; who did not initiate return of property under hegoumenos Isaac and did not terminate it under archimandrite⁶¹ Nikodem, after the departure of Nikodem, nobody can demand the property from the church of Saint George.

Уто се убрѣтајетъ вноуѓръ меге вишеписанне, или чија годѣ боуде баџина, или коупленица, или виноград, или млинъ, или нива, или сѣнокосъ, или периваль, или врътъ, или водоваге, ктo н'єсть утприль при игоумене Исацѣ и Ђзель и при архимоудритѣ Никодимѣ, по одышсти Никодимовѣ, никто да не оужицаетъ цркви Светаго Георгија.⁶²

This means that the Church took possession of everyone's estate by lapse of time, if the owner did not ask for the return of his domain, which was in a condition of falling into disuse, in a required term. The property rights of those

59 Edited by D. Ječmenica, *ssa* 11 (2012), p. 40.

60 Edited by Marković, p. 59.

61 Archimandrite (ἀρχιμανδρίτης, fem. ἀρχιμανδρίτισσα, lit. “chief of a sheepfold”), a monastic term with two principal meanings: 1) in the early period of monasticism (4th–6th centuries) the term is a common equivalent of *hegoumenos*, the superior of a monastery; 2) from the 6th century it began to be used for the chief of a region or urban federation of monasteries, akin to an exarch or protos.

62 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 321–322.

owners became obsolete, and the Church acquired the ownership by usufruption. In the presented example, the legal proceedings for return of property had to be activated while Isaac was hegoumenos, and terminate while Nikodem was archimandrite. After Nikodem's departure, the right to return the estate became obsolete. On the contrary, property rights of the Church were never obsolescent, as we can see from the text of Saint George's charter, as well: "And everywhere, where we can find a church villager, and field, and vineyard, and horse, or any gain [i.e. property], live or dead [i.e. cattle and immovable things], it has to be returned [to the church], and let there be no obsolescence" (И где се обрѣта чловѣкъ црквовны, и нива, и виноград, и конь, и кои любо добитъкъ или живъ или мртвъ, да се врати, да моу нѣ старайне).⁶³

Derivative acquisition refers to those acquisitions procured from others. We shall speak on them in the following chapters.

5 Rights over the Property of Another (*Iura in re aliena*)

In some cases a person owned property, but his rights over such a property might be limited. The most important rights over another's property, mentioned by Serbian legal sources, are *servitudes*, *pledge* and *emphyteusis*.

Servitudes (*servitudes*, δουλεία, ράβοτε) was said to exist where X possessed rights *in rem* over the property of Y. According to the interpretations of Roman jurists, servitudes might be praedial or personal, and praedial servitudes could be rustic (*iura praediorum rusticorum*) or urban (*iura praediorum urbanorum*). Praedial servitudes were rights over immovables. These rights were exerted by the owner of a *praedium dominans* (dominant tenement) over a *praedium serviens* (servient tenement). Such servitudes were of two types: rural or rustic and urban. Praedial servitudes were held by virtue of the ownership of a house or land; personal servitudes did not depend on such ownership. The most important personal servitudes were: *ususfructus*, *usus*, *operae servorum vel animalium*, *habitatio*.⁶⁴

63 Ibid., p. 327. See S. Šarkić, "Originarni načini sticanja svojine u srednjovekovnom srpskom pravu" ["Original Acquisition of Ownership in Serbian Mediaeval Law"], in *Vizantijski svet na Balkanu, knjiga II* [Byzantine World in the Balkans, Volume II] (Belgrade 2012), pp. 417–424.

64 D. VII, 1–9; XXXIII, 2–3; VIII, 1–6; *Iust. Institutiones*, II, 3–5; *Codex Iustinianus*, III, 33–34; Gaius, *Institutiones*, II; Pauli *Sententiae* I, 17; Ulpiani *Regularum Liber singularis*, XV, 1; XIX, 1.

The Roman term *servitudes* was translated in Byzantine legal sources as δούλεια, although this word means slavery and hard (slavish) work, as well.⁶⁵ Redactors of Serbian legal miscellanies used the word *rabota* (работа), which also has different meanings.⁶⁶

The rules on servitudes penetrated into Serbian law at the beginning of the 13th century, when Saint Sabba incorporated in his *Nomokanon* the whole *Procheiron*. Chapter 38 of the *Procheiron*, under the title “On novelties” (Περὶ καινοτομιῶν), contains different provisions on servitudes, mixed with administrative rules on building new houses.⁶⁷ For this reason, the chapter was entitled by Serbian translators of the *Procheiron* as “On building of new houses, reconstruction of the old and other things” (О зданьи новыхъ домовъ, и в поставь-лиеніи ветхъыхъ, и оныхъ вѣщехъ).⁶⁸ From the 64 provisions in Chapter 38 of the *Procheiron*, Matheas Blastares took in his *Syntagma* only 18, and created a short Chapter K-3, under the same title “On novelties” (Περὶ καινοτομιῶν, О ново-твореныхъ in Serbian translation).⁶⁹ It contains, beside different decrees and prohibitions by administrative authorities, some urban servitudes (работе) that could be instituted and changed by special agreements (сумфѡнов, съгласије). These are the following rules:

- A house in a town (e.g. Constantinople) may not screen the view to the sea.⁷⁰ This is a very well known urban servitude, called by Roman iurists *ne luminibus, ne prospectui officiatur*, or the shorter *servitus prospectus*—“right to light” (δούλεια ἀπόψεως, работа отъ видѣнїя). However, the stated prohibition does not refer to gardens, if the distance between the buildings is larger than a hundred feet (ἐὰν δὲ ὁ ποδῶν ἐν μέσῳ τῶν δύο οἰκων εἴη διάστημα, αἱψει же стомъ ногамъ мѣжду дѣтма храмома юсть расстояниє).⁷¹

⁶⁵ See M.Th. Fögen, “Das Lexicon zur Hexabiblos aucta”, in *FBR, Fontes minores VIII, Lexica iuridica byzantina*, ed. L. Burgmann, M.Th. Fögen, R. Meijering, and B.H. Stolte (Frankfurt am Main 1990), p. 171: Δούλεια ἔστιν ἐθνικοῦ νόμου διατύπωσις. The definition is the translation of Roman juristconsult Florentinus, who wrote: *Servitus est constitutio iuris gentium* (D. I, 5,4). See also Y. Vin, ‘Ponyatie ‘ДОУЛЕИА’ kak sociokulturniy koncept v reprezentacii vizantiyskih aktov’ [“The Notion ‘ДОУЛЕИА’ as a Sociocultural Concept in Presentation of Byzantine Acts”], *Science Journal of Volgograd State University* 22.5 (2017), pp. 149–161. Cf. Chapter 5, section 3.

⁶⁶ See M. Blagojević, “Rabote velike i male”, in *LSSV*, p. 609. Among the different meanings of the term *rabote*, the author does not mention servitudes.

⁶⁷ Zepos, *Ius Graecoromanum*, vol. II, pp. 206–216.

⁶⁸ N. Dučić, *Književni radovi* 4 (Belgrade 1895), pp. 380–397; Petrović, *Zakonopravilo ili Nomokanon Svetoga Save*, pp. 315b–321b.

⁶⁹ Greek text edited by Ralles and Potles, pp. 312–314; Serbian text edited by Novaković, pp. 330–332.

⁷⁰ *Procheiron XXXVIII, 5*, Zepos, vol. II, p. 206 = Harmenopouli *Hexabiblos II, 4, 46*; *Syntagma K-3, 4*, ed. Ralles and Potles, p. 312; ed. Novaković, p. 331.

⁷¹ Ibid.

- It is forbidden to let smoke out of stoves, except if someone disposes a special right to do that (εἰ μὴ ἀρα δίκαιον εἶχεν ἐκεῖσε τὸν καπνὸν εἰσπέμπειν; **развѣ** **ѹбо аиже правинѹ имѣльєсть тамо дымъ испоѹщати**).⁷²
- Nobody can throw trash under a neighbour's wall, except if somebody disposes of a corresponding servitude (Οὐδεὶς δύναται κόπρον πλησίον τοῦ ἄλλοτρίου τοίχου ρίπτειν, εἰ μὴ τοιαύτην ἔχει δουλείαν; **никтоже можетъ гнои близъ тогудеи стѣны помѣтати, развѣ аиже таюю имать работоу**).⁷³
- On the occasion of building a new house, it was forbidden to brick up a window to a neighbour, except if the agreement instituted a corresponding servitude (εἰ μὴ ἀρα δουλείαν ἔχοι κατὰ συμφωνίαν; **развѣ аиже работоу имать по съгласию**).⁷⁴

Among rural or rustic servitudes, Matheas Blastares mentioned only two rules. He classified them into a Chapter H-8, under the title "On pasture" (Περὶ νομῆς, Ο παστεύς). 1) If someone has a right to water (*aquaeductus*, leading water in pipes, or in stone channels) or a right of pasture of sheep on another man's land (*servitus pecoris pascendi*), he can raise a hut on that land ('Ο ἔχων δουλείαν τοῦ πατίζειν καὶ βόσκειν ἐν τῷ ἀγρῷ σου θρέμματα, δύναται τοῦ ἐν αὐτῷ ποιεῖν καλύβην, **Имѣни работоу иже въ ніемъ творити коуциоу**). 2) If someone, with the knowledge of the owner, leads water over another man's land, after three years he acquires this servitude, and the owner of the land cannot disturb him ('Ο δὲ ἄλλοτρίου ἀγροῦ ἔλκων ὕδωρ, εἰδότος τοῦ δεσπότου τοῦ ἀγροῦ, κτάται κατὰ τοῦ ἀγροῦ δουλείαν, ἐν τῷ νενομισμένῳ τριετίᾳς χρόνῳ, μὴ κωλύσαντος αὐτὸν τοῦ δεσπότου τοῦ ἀγροῦ, **Иже по тоуждемоу селу веды воду, ведоуциоу господиноу села, стежавають на селѣ работеу въ оузақоненномъ трилаттїа врѣмени, не възбранившоу юмоу господиноу села**).⁷⁵

Serbian legal sources mention only a few rural servitudes: right to water (*aquaeductus*), right to cut trees (*silva caedua*), right to watering one's cattle

72 *Procheiron* XXXVIII, 18, Zepos, vol. II, p. 208 = D. VIII, 5, 8, 5: *Ulpianus libro septimo decimo ad edictum: ... Aristo Cerellio Vitali respondit non putare se ex taberna casaria fumum in superiora aedificia iure immitti posse, nisi ei rei servitutem talem admittit;* Syntagma K-3, 12, ed. Ralles and Potles, p. 313; ed. Novaković, p. 332.

73 Syntagma K-3, 14, ed. Ralles and Potles, p. 314; ed. Novaković, p. 332; *Procheiron* XXXVIII, 22, Zepos, vol. II, p. 209 = D. VIII, 5, 17, 2. It is a case of *servitus sterquilini* or *latrinae sive sterculini* ("right to have a dung heap against a neighbour's wall") of Roman law.

74 *Procheiron* XXXVIII, 4, Zepos, vol. II, p. 206; Syntagma K-3, 2, ed. Ralles and Potles, p. 312; ed. Novaković, p. 330. This question was minutely regulated by a law from the reign of Emperor Zeno, without any mentioning of promulgation year (so, between 474 and 491). See *Cod. Iust.* VIII, 10, 12 in the chapter under the title *De aedificiis privatis*.

75 Syntagma H-8, ed. Ralles and Potles, p. 401; ed. Novaković, p. 422. The rules were taken from *Basilika* LVIII, 7, 2 = *Cod. Iust.* III, 34, 2.

on another's land (*pecoris ad aquam apulsus*), right of way (*iter*), right to drive a carriage or animal (*actus*) and right of pasture (*pecoris pascendi*). Among personal servitudes we can find only *ususfructus* (a right to use and enjoy the fruits of another's property) and *usus* (use—a usufruct, but without a right to take the fruits).⁷⁶

King Milutin's charter to the monastery of Saint George mentions the right to water (*aquaeductus*, водаџина, водоважда, водоваге, водоваге). The text says that everyone who leads water from the church's place called "head" has to pay two dinars to the church. If someone leads water without the permission of the hegoumenos, he has to pay 12 perpers to the King's treasury and double to the church. And if someone leads water with the consent of the hegoumenos, he has to pay three perpers (И кто вади водомъ која се изводи ут црквона мѣста главе, да подастъ цркви ут рала къль водоваџину, и ут врѣта .В. динара. Ако ли безъ игоумнова благословленїя поведе кто ут црквене главе водоу да плати .Вl. перьперь оу царину, а цркви двоину да дастъ. Ако ли съ оупросомъ водоу поведе а водоваџину оуджи, да плати .Г. перьпере).⁷⁷

Cutting of trees was mentioned in the same charter: "He who cuts trees on the mountains belonging to the Church has to give every fourth tree to the church. If someone cuts without a permission of the hegoumenos, he has to pay 12 perpers to the King, and the Church will take him every cut down tree" (И кто лѣсъ или дрѣва оу црковномъ брѣдѣ, да даје цркви четврто дрѣво. Ако ли безоу игоумнова благословленїя сѣче цо любо да плати .Вl. перьперь, а цркви лѣсъ вѣсь да моу оуѣме).⁷⁸

The right to watering one's cattle on another's land (*pecoris ad aquam apulsus*) can be found in Tsar Dušan's chrysobull to the monastery of Saint Archangels Michael and Gabriel. The text says that the Emperor did not deprive the hamlet of Golubovci of servitude to watering cattle (А напоица Голубов'цем не ѿнесмо оу Бодислалихъ коукъ).⁷⁹ The same chrysobull gives to the village of Lubižnane the right to drive a carriage or animal (*actus*) and the

76 Taranovski, *Istorija*, vol. III, p. 98.

77 Mošin, Ćirković, and Sindik, *Zbornik*, p. 237. Right of leading water over another's land was mentioned in one Byzantine document from the year 1373: Anna Palaiologina, with the consent of her consort, sells her estate called Marianna in Kalamaii, which was part of her dowry, to the monastery of Docheiariou. The document says that all rights that the seller used will be transferred to the buyer, including servitude of *aquaeductus*, probably from a river. *Actes de Docheiariou*, ed. N. Okonomides, Archives de l'Athos, XIII (Paris 1984), no. 42, pp. 235–239. Cf. L. Bénou, *Pour une nouvelle histoire du droit byzantin, Théorie et pratique juridiques au xive siècle* (Paris 2011), p. 253, n. 56.

78 Mošin, Ćirković, and Sindik, *Zbornik*, p. 237.

79 Edited by Mišić and Subotin-Golubović, *Svetearhanđelovska hrisovulja*, p. 103.

right to put cattle to graze on another man's land (*ius pascendi*): и долѣ опеть до мегије Коришке и до Светога Петра, да си имаю любиј'нане съ Скоробици како соу и прѣвѣ пасли.⁸⁰

The right of way or right to pass (*servitus itineris ac viae*) was mentioned in a sale contract (*emptio venditio*) in which a certain Dobroslava with her children sells her house in the city of Prizren to a certain Mano, brother of Dragitza. In the text of the contract we read that the road, leading to the house, will be free for everyone (Пѣтъ двора тога свободънъ с коловозомъ).⁸¹

The right to put cattle to graze on pastures belonging to the counties (*župa*), was regulated by article 74 of Dušan's Law Code: "Let village pasture with village, where one village, there also the other. Only legal enclosure and meadows may not be grazed" (Село селам да пасе; коудѣ єдно село тоудѣ и друуго; разеѣ забѣль законитыхъ и ливадъ законитыхъ никто да не пасе).⁸² Article 75 says similarly: "No district may graze its stock within another district. And if in the district there be a separate village which belongs to any lord, or to my Majesty, or is a Church village, or belongs to a gentleman, that village shall graze with the rest of the county district and no man shall forbid it to so graze" (Жоупа жоупѣ да не попаса добит'комъ ница; ако ли се наидѣ єдно село ѿ този жоупѣ, оу кога любо властѣлна, или юсть царства ми, или юсть црковно село, или властѣличинка; иномѹзи сељ никто да не забрани пасти; да пасе коудѣ и жоупа).⁸³ It seems that the "legal enclosures and meadows" (забѣль законитыхъ и ливадъ законитыхъ) were Crown lands and excluded, but the rest of the pasture land in the county was common land for grazing of all the villages in the county, regardless of ownership.

Among personal servitudes, a right to use another's property (*usus, usus-fructus*) is found mostly in charters presented in favour of churches and monasteries: giving land to monasteries or churches, the monarch or any other individual instituted a lifelong use for a certain natural person, expressing that with the terms "that he uses lifelong" (да си облада до негова живота), "let him store it until his death, and after his death let it belong to the Church" (своє все да дръжи до смрти, а по смрти юго да юсть црковно), "until the end of his life" (яко до живота свога), and similar.⁸⁴ We will quote two interest-

⁸⁰ Ibid., p. 91.

⁸¹ Edited by Bubalo, *Srpski nomici*, p. 250.

⁸² Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 59; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

⁸³ Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 60; *Zakonik cara Stefana Dušana*, vol. III, pp. 118, 120.

⁸⁴ Cf. Taranovski, *Istorija*, vol. III, pp. 96–98.

ing examples. 1) King Milutin gave as a present to a certain squire's (named Milša) wife named Radoslava the monastery of Saint George and a village of Ulitišta, and the gift was confirmed by the Kings Stefan Dečanski and Dušan. However, King Dušan, for unknown reasons, decided between 1336 and 1337 to give Radoslava's estate to the monastery of Hilandar, and he left to the squire's wife only a right to use and enjoy the fruits of her property, but her descendants were deprived of the right of succession (*И да се храни Радослава, Мил'шина жена, до не съмрти, а по не съмрти да не въладда мъстичъ тъмъ ни сънъ, ни дълти, ни къто ѿ рода*).⁸⁵ 2) In the sale contract by which a certain Radoslava Mirković sells her house in Trepča⁸⁶ to the monastery of Saint Paul (19 January 1438), a right of use was established: Radoslava would keep a small room in the house, where she and her sister could find shelter until the end of their lives (*А за муга живота ... да имамъ ѿ късие ёдънъ къеларъ гдъ кю привъгнат е сестромъ*).⁸⁷ In this case a right of lifelong use of a small room was instituted by a sale contract.⁸⁸

Pledge (*pignus*, ἐνέχυρον, залога) is a transfer of possession under which the creditor obtained possession of the property pledged, but ownership remained with the debtor. The expression was sometimes used as a general one for any form of real security, including *pignus* and *hypotheca*.⁸⁹ The pledge could be negotiated by contract or be determined by law. All saleable property could serve as a pledge. In the place of single objects, the entire current and future property of the debtor could also be pledged.

Byzantine legal miscellanies always put together the rules on pledge in the same chapter with provisions on loans.⁹⁰ Chapter 10 of *Ecloga* has a title Περὶ

85 “Povelja kralja Stefana Dušana Hilandaru 1336/1337” [“King Stefan Dušan's Charter to Hilandar 1336/1337”], ed. S. Marjanović-Dušanić and T. Subotin-Golubović, *SSA* 9 (2010), p. 65.

86 The Trepča Mines (Serbian Cyrillic *Рудник Трепча*, Albanian *Miniera e Trepçës*) is a large industrial complex in Kosovo, located 9 km northeast of Kosovska Mitrovitza. It is one of Europe's largest lead-zinc and silver ore mines. The enterprise known as Trepča was a conglomerate of 40 mines and factories. The oldest mine called *Stari Trg* (*Cmapu Tpe* = “The Old Market-town”) is one of the rare mines which was operational from the Roman period. Saxon miners, who came to Serbia in the 13th century, built settlements and churches around the mines.

87 Bubalo, *Srpski nomici*, p. 260.

88 See S. Šarkić, “Službenosti u vizantijskom i srpskom srednjovekovnom pravu” [“Servitudes in Byzantine and Serbian Mediaeval Law”], *ZRVI* 50.2 (2013), pp. 1003–1012.

89 Cf. D. XIII, 7, *De pigneratia actione vel contra*.

90 Although modern legal science treats pledge as a part of the law of property and loan as a real contract and a part of the law of obligations.

δανείου ἐγγράφου καὶ ἀγράφου καὶ τῶν διδομένων ἐπ' αὐτοῖς ἐνεχύρων ("On literal and unilateral loans and for them given pledges");⁹¹ Chapter 16 of the *Procheiron* with a title Περὶ δανείου καὶ ἐνεχύρου ("On loan and pledge"); and the Chapter 28 of the *Epanagoge* entitled Περὶ χρέους καὶ ἐνεχύρων ("On loans and pledges").⁹² That was the reason why Matheas Blastares included in his *Syntagma* Chapter Δ-2 under the title "On lenders and loan and pledges" (in the Greek text Περὶ δανειστῶν, καὶ δανείου, καὶ ἐνεχύρων⁹³ and in the Serbian translation О заемницима и залогом и залогу).⁹⁴ The rules concerning pledge are the following.

1) "The fruits from property pledged will be added up to the debt and if the whole amount of debt was that way discharged, the pledge will be given back to the pledgor. If the value of the fruits is bigger than the debt, any surplus has to be returned" (Οἱ ἐκ τοῦ ἐνεχύρου ληφθέντες καρποὶ ψηφίζονται εἰς τὸ χρέος· καὶ ἐὰν ἵκανοι γένωνται πρὸς τὸ δόλον χρέος, λύεται ἡ ἀγωγὴ, καὶ ἀποδίδοται τὸ ἐνέχυρον· εἰ δὲ καὶ πλείονές εἰσι τοῦ χρέους οἱ καρποὶ, ἀποδίδονται οἱ περιττεύοντες, Ιήκε στὸν ζαλογα πρινέτι βγίνεται πλοδοφέ πριγκιταίται σε βὴ δλγ̄, и аще довол'ны вогудуетъ къ в'сему дльгоу, раздѣлшасяеть се вина и въздавають се залогъ; аще ли же и множашши соутъ дльга плодове, въздавають се излишъствоу юшти).⁹⁵

2) "If the lender, not by his own negligence (*culpa*),⁹⁶ has lost property pledged, he will be not responsible, but he has to explain what happened to him" (Ἐὰν ὁ δανειστὴς μὴ παρ' ἴδιαν αἰτίαν ἀπωλέσῃ τὸ ἐνέχυρον, οὐκ ἐγκαλεῖται· χρὴ δὲ αὐτὸν ἀποδεῖξαι διτὶ ἀπώλεσε, Аще заемовавши не отъ своеим вины погубить залогу, не соудимъ юстъ; подобають же иему оуказати тако погуби).⁹⁷

3) "If the lender explains how he has lost property pledged, he acquires a right to request a payment of a debt" (τὰ γὰρ τυχηρὰ οὐ κινδυνεύεται τῷ δανειστῇ, ἀλλὰ δήνασται κατὰ τύχην ἀπωλέσας τὸ πρᾶγμα, ἀπαιτεῖν τὸ αὐτῷ κεχρεωστημένον, прикладюштада бо не бвдствують заемовавшому, не можетъ по приложданю погубивъ вешть истездати дльжное).⁹⁸ "If the parties to the contract had an agreement that the loss of the pledge absolves the debtor from responsibility, that becomes effective" (εἰ δὲ μεταξὺ τῶν συναλλασσόντων ἥρεσεν, ἵνα ἡ ἀπώλεια τῶν ἐνεχύρων ἐλευ-

91 *Ecloga, das Gesetzbuch Leons III. und Konstantinos' V.*, ed. L. Burgmann, FBR, Band 10 (Frankfurt am Main 1983), p. 204.

92 *Zepos*, vol. II, pp. 155 and 320.

93 Edited by Ralles and Potles, p. 204.

94 Edited by Novaković, p. 214.

95 Ed. Ralles and Potles, p. 205; ed. Novaković, p. 215. Cf. *Procheiron* XVI, 3, ed. Zepos, vol. II, p. 155.

96 It could be a case of gross fault or neglect, *culpa lata* of Roman law.

97 Ed. Ralles and Potles, p. 205; ed. Novaković, p. 215. Cf. *Procheiron* XVI, 5, ed. Zepos, vol. II, pp. 155–156.

98 Ed. Ralles and Potles, p. 205; ed. Novaković, p. 215.

Θερώσῃ τὸν χρεώστην, τοῦτο ἴσχύει, αἱψε λι πο σρβδ' ζαμβνουουοικής σε ουγοδно
бысть да погибъль ζалогъ свободить дльжника, се кртп'ко юеть).⁹⁹

The so-called “*Justinian's Law*” contains two articles concerning the pledge. Article 26, under the title “On pledges” (Ω Ζαλογαχъ) says:

If someone gives a pledge and tells [to the pledgee]: “Take this pledge until the fixed day” [and the pledgee says to him] “If you do not redeem a pledge [till the determined term] do not ask it any more”; a judge will not approve that, and [the pledgee] has to wait until the third term; if [the pledgor] does not redeem [a pledge] till the tird term, after that he cannot ask it [property pledged].

Аиже икто ζаложитъ кою любо вѣцъ. и речеть прииеми ζалогъ. в то до икото
дне, аиже си не шткоупишъ ζалогъ. да га векиє не ицгеши. да га соудїа не
чиюеть за тои нь да га ческа то третієга рока. да аиже мѣ до третієга рока не
шткоупитъ. да га потвм не ице.¹⁰⁰

Article 27, entitled simply “Law” (*Ζакон*), is similar to the rules of the *Syntagma*, treating the cases of pledge lost: “If any [pledgee] loses a pledge, he has to pay it, and to request a debt. If [the thing pledged] was destroyed by fire or seized by brigands, the indolence and negligence of the pledgee has to be examined. If he has saved his own property, and lost another's, he is culpable” (Аиже икто ζалогъ
ζагоубить, да га плати, а дльгъ да си оуζмет. Аиже ли га шгнь въ неζадапу
пожежеть. или разбоиници въсхигетъ. подовает изнанти лѣнность и нераждене
прииемшомъ. аиже ли юест своя съхраниль, а шнаа погоубиль повиннъ юест).¹⁰¹

Serbian charters promulgated before the Law Code of Stefan Dušan mention pledge (ζалога) only two times. In King Milutin's chrysobull to Hilandar's pyrgos in Chroussia (1313–1316), the Serbian monarch says that nobody can take anything given to the monastery tower (πύργος), and he forbids that the property, belonging to Hilandar, could be sold or obtained as a pledge (ни оу коупино
име, ни оу ζалогу никоимъ швразомъ).¹⁰² The same formula was repeated in King Dušan's chrysobull, giving the church of Most Holy Virgin in Lipljan¹⁰³ to

⁹⁹ Ed. Ralles and Potles, p. 205; ed. Novaković, p. 215.

¹⁰⁰ Edited by Marković, p. 59.

¹⁰¹ Ibid., p. 59. It is interesting to note that neither *Farmer's Law* (the main source of so-called “*Justinian's Law*”) nor *Procheiron* and *Basilika* contain such provisions. However, both articles are completely in the genius of Byzantine law.

¹⁰² Mošin, Ćirković, and Sindik, *Zbornik*, p. 443.

¹⁰³ Lipljan (Serbian Cyrillic Липљан, Albanian Lipjani) is a town and municipality located in

Hilandar's pyrgos in Chroussia.¹⁰⁴ It is evident that a pledge, beside purchase, was considered as one of the ways of alienating property.

In Dušan's Law Code, only short article 90 treats the pledge: "Pledges, wherever they be, shall be redeemed" (Залоге коудѣ се вѣрѣтаю да се вѣткоу—пѣти).¹⁰⁵ The legislator institutes the right of the pledgor to redeem the property pledged everywhere he finds it. The abovementioned provision was promulgated to the benefit of debtors (very often Serbs), who delivered precious goods to their creditors (with great frequency Ragusans) and often lost them for ever.¹⁰⁶ That was the reason why Tsar Dušan, in his famous treaty with Dubrovnik (20 September 1349, i.e. only four months after the promulgation of the Code) forbids to the Ragusans receiving pledges from Serbs:

From now and furthermore nobody can take or receive pledges, neither from my imperial or royal nobleman, nor from anyone else who has the power according to my imperial or royal authorisation. If someone took it, he has to return the pledge, and if he has given [property pledged] to the third person, a transaction will be without legal strength.

И юд, сеји напрѣда да не прѣимѣ ни Ѹзмѣ ник'то залоге ни юд властелина царьства ми ни кралїева, ни когаљово дръжанија царьства ми и кралїева, к'то ли се вѣрѣте Ѹземь да залогъ тѣзи поврати впеть, а за цио је пријель да мѹ се тази кѹплја Ѹпад'нї.

However, at the end of the treaty, after the date and before the signature, was added that already existing pledges will be in legal force and that they will enjoy judicial protection (И ѿце такози ш ними Ѹглави царьство ми, цио сѹ залоге заложенъ кога любо малла и голѣма изема царьства ми и кралїевъ да се ицу ѿдомъ а прав'домъ).¹⁰⁷ The same provisions were repeated in Tsar Uroš's treaty with Dubrovnik (25 April 1357).¹⁰⁸

the Priština district of Kosovo. According to the 2011 census, the town of Lipljan has 6,870 inhabitants, while the municipality has 57,605 inhabitants.

¹⁰⁴ Edited by M. Ivanović, *ssa* 13 (2014), p. 43.

¹⁰⁵ Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 70; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

¹⁰⁶ It seems that it was very difficult for a pledgor to redeem his pledge from a pledgee. Maybe the best evidence is the letter of Tsar Dušan to the Ragusans from 30 March 1352: the Emperor himself intervenes with Ragusans that they get back to Prince (*knez*) Vratko the precious girdle, pledged for 118 perpers by Marin Bunić. See M. Pucić, *Spomenici srbski*, vol. II (Belgrade 1862), p. 20.

¹⁰⁷ Edited by D. Ječmenica, *ssa* 11 (2012), p. 40.

¹⁰⁸ Edited by M.A. Černova, *ssa* 12 (2013), p. 83.

Pledges were completely abolished in treaties between the cities of Dubrovnik (Ragusa) and Kotor (Cataro), already by 20 September 1181: *Ut pignora non sint inter Ragusium et Catarum.*¹⁰⁹

Special attention has to be paid to the charter of Despot Đurđ Branković, issued in the city of Smederevo on 10 May 1450 and written in Latin, in favour of *Johannes de Hwnyad, regni Hungarie gubernator* (“John Hunyadi¹¹⁰ Governor of the Kingdom of Hungary”). The Serbian Despot with his wife Jerina (Irene) and his sons Grgur, Stefan and Lazar agree that John Hunyadi and his sons Mathias and Ladislavus hold as a pledge (*in pignoraticie*) the Despot’s property in Hungary, towns of Mwnkach,¹¹¹ Rivulidominarum,¹¹² Zathmar,¹¹³ Nemethy,¹¹⁴ Debreczen,¹¹⁵ with the villages of Bezermen¹¹⁶ and Dada¹¹⁷ and the belonging manors (*possessio*), as security for a debt of 155,000 ducats. A debt will be discharged from the annual revenues of the Despot’s property, estimated at 6,700 ducats. On payment of principal, the property had to be delivered up to the debtor.¹¹⁸ Although this document mentions a contract of pledge, it cannot be considered as a source of Serbian mediaeval law. All rules concerning the pledge were in accordance with the customary law of the Kingdom of Hungary (*regni consuetudinem pignori*).¹¹⁹

Emphyteusis (ἐμφύτευσις, from verb ἐμφύτεύω = I implant, I inculcate, I instill) is a real right over the property of another, consisting in a grant of land by the State or local authority on a long lease or in perpetuity for a groundrent.¹²⁰ By the late 5th century *emphyteusis* had developed into a spe-

¹⁰⁹ Novaković, *Zakonski spomenici*, p. 22.

¹¹⁰ Hungarian *Hunyadi János*, Romanian *Ioan* or *Iancu de Hunedoara*, Serbian *Sibinjanin Janko* (Сибињанин Јанко), famous Hungarian military commander and statesman.

¹¹¹ Modern *Mukachevo* (Ukrainian and Russian *Мукачево*, Hungarian *Munkács*), a city located in the valley of the Latorica River in Zakarpattia Oblast (Province) in Western Ukraine. The population is 86,339.

¹¹² Today *Baia Mare*, municipality along the Săsar River in northwestern Romania (Hungarian *Nagybánya*, German *Frauenbach*, Ukrainian *Бая-Мапе*). The population is 140,738.

¹¹³ In present-day *Satu Mare*, a city with a population of 102,400 in northwest Romania (Hungarian *Szathmárnémeti*, German *Sathmar*).

¹¹⁴ Hungarian *Németi*, Serbian *Nemci* (*Немци*), i.e. *Germans*, small city close to *Satu Mare*.

¹¹⁵ Hungarian *Debrecen*, Romanian *Debrețin*, German *Debrezin*, Czech and Slovak *Debrecín*, Serbian *Дебрецин*, Hungary’s second largest town. The population is 213,700.

¹¹⁶ Modern *Hajdúbószörmény*, a town in northeastern Hungary with a population of approximately 30,000 people.

¹¹⁷ Modern *Tiszadada*, a village in Szabolcs-Szatmár-Bereg county in the Northern Great Plain region of Eastern Hungary. The population is 2,247.

¹¹⁸ Edited by A. Krstić, *ssa* 11 (2012), pp. 151–174.

¹¹⁹ Ibid., p. 155.

¹²⁰ Cf. D. vi, 3.

cific type of written contract governing long-term, usually perpetual leases of real property applicable not only to crown lands but to holdings of private and ecclesiastical landlords. Emperor Zeno defined *emphiteusis* as a right distinct from lease or sale, although possessing certain qualities of both.¹²¹ An *emphyteuta* could not be evicted as long as he paid an annual fee (*solita pensio*) or presented to his master receipts (*apodochae*) for public services; his tenement was heritable and could not be alienated unless the tenant had lost the contract, *emphyteuticum instrumentans*.¹²²

Chapter 15 of the *Procheiron* has a title Περὶ ἐμφυτεύσεως,¹²³ and contains six provisions speaking on emphyteusis of Church estates. The Serbian translator of the *Procheiron* (*Zakon gradski*) used the word *nasaždenije* (насажденије) = planting, implanting,¹²⁴ which is obsolete in modern Serbian.¹²⁵ Matheas Blastares introduced in his *Syntagma* a short Chapter E-8, entitled Περὶ ἐμφυτεύσεως (О насажденији in Serbian translation),¹²⁶ which represents an interpretation of Justinian's *Novella* cxx, chapters 2 and 8 (ΠΕΡΙ ΕΚΠΟΙΗΣΕΩΣ ΚΑΙ ΕΜΦΥΤΕΥΣΕΩΣ ΕΚΚΛΗΣΙΑΣΤΙΚΩΝ ΠΡΑΓΜΑΤΩΝ, *De alienatione et emphyteosi et locatione et hypothecis et aliis diversis contractibus in universis locis rerum sacrarum*).¹²⁷

In Serbian legal sources we cannot find any information on emphyteusis.¹²⁸

¹²¹ *Cod. Iust.* iv, 66, 1, a law promulgated between 476 and 484.

¹²² *Cod. Iust.* iv, 66, 2 and 3. Two laws promulgated in 529 and 530 by Emperor Justinian. See also D. Simon, "Das fröbyzantinische Emphyteuserecht", in *Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte*, vol. 3 (Vienna 1982), pp. 365–422, and A.J. Cappel, "Emphyteusis", in *ODB*, pp. 693–694.

¹²³ *Zepos*, vol. II, pp. 154–155.

¹²⁴ Ed. Dučić, p. 302; ed. Petrović, p. 287a. The title of the chapter in Serbian translation is О насажденији.

¹²⁵ In modern Serbian we use the word *zasadivanje* (засадивање).

¹²⁶ Ed. Ralles and Potles, pp. 250–251; ed. Novaković, pp. 263–264.

¹²⁷ Ed. Schoell and Kroll, pp. 578–591.

¹²⁸ See S. Šarkić, "Rights over the Property of Another (*Iura in re aliena*) in Byzantine and Serbian Mediaeval Law", *Science Journal of Volgograd State University* 25.6 (2020), pp. 168–179.

The Law of Obligations

1 The Concept of Obligation

According to the definition of Roman jurists “an obligation is a legal bond whose force compels us to perform something in accordance with a law of our State” (*Obligatio est iuris vinculum quo necessitate adstringimur alicuius solvendae rei, secundum nostrae civitatis iura*).¹ The essence of obligation is its personal nature. Obligations give rise to rights and duties.

The Serbian legal sources give us only a few bits of information on the law of obligations. The Roman classification used in the *Institutes* (*ex contractu, quasi ex contractu, ex delicto, quasi ex delicto*) was not known. The sources mention only two characteristic terms concerning obligations: *dug* (дългъ, δελ'γъ, Greek χρέος, Latin *debitum*) = debt and *vera* (вѣра) = faith, trust, belief.²

Dug (debt) was a general term to designate an obligation in Serbian mediæval law. This can be seen from numerous legal acts. For example, Serbian King Stefan Uroš I, in his treaty with Dubrovnik (23 August 1254), says: “If the judges do not perform [the obligation], the debt will be taken by me the King, according to justice” (Ако ли га съдъце не издааде да гдѣ ми правъда юкаје юзети тъ дългъ, да га юзме карадаевъство ми).³ Two goldsmiths, Mihat and Brajko Bogorjević, balancing their accounts and claims (29 December 1410), declare that there are no further mutual debts (И да не има вексе искати Бранко ни негови сынови Михата ни за ёданъ дългъ, ни Михат да не има вексе искати Бранка или негове сынове или негове ближнє ни за ёданъ дългъ, цо юбило мего пими до дъньсъ).⁴ *Vera* (faith, trust, belief) concerns the essence of the obligation: only the promisor’s personal performance extinguished the obligation. In that sense King Uroš’s treaty with Dubrovnik (13 August 1252) requests that the parties to the agreement “stay in the good faith” (стоати ју правовѣрнои вере),⁵ and Tsar Uroš “gave [to the Ragusans] his imperial faith” (и на мою вѣроу царъскоу).⁶

1 *Iust. Inst.* III, 13, *De obligationibus*. We do not know who the author of the abovementioned definition is.

2 Taranovski, *Istorija*, vol. III, p. 101.

3 Mošin, Ćirković, and Sindik, *Zbornik*, p. 213. See also pp. 216, 257, 322, 326, 346, 358, 360, 538. Cf. B. Marković, “Dug”, in *LSSV*, pp. 171–172.

4 Edited by Bubalo, *Srpski nomici*, p. 255.

5 Mošin, Ćirković, and Sindik, *Zbornik*, p. 188.

6 Treaty from 29 September 1360. Edited by Novaković, *Zakonski spomenici*, p. 182.

This means that the creation of legal relations was understood as the “giving and acceptance of the faith”, as article 51 of Dušan’s Law Code says: *Shall I trust him? ... Trust him as myself* (вѣровати ли га кю ... вѣроѹи колико и мене).⁷

2 Contracts

A contract is an agreement between two or more persons which creates an obligation to do or not do a particular thing. Studies of legal acts have shown that Serbian mediaeval law was acquainted with several contracts, such as sale, exchange, gift, deposit, hire, loan, gratuitous loan of a *res* (*commodatum*) and partnership.

2.1 Sale

Sale (*emptio-venditio*, πράσις καὶ ἀγορασία, κουπλιενੰ и продање) was a contract in which the seller agreed to give exclusive possession of a thing to the buyer for a price. In general, all things (movable and immovable) and rights (including State functions and dignities, the purchase of titles) could be the basis for a sale contract. *Emptio-venditio* was minutely examined by Roman jurists, and Byzantine law also had a great number of rules concerning sale contract in the following miscellanies: 1) Chapter IX of the *Ecloga* under the title “On literal and unliteral buy and sell agreements and their down payments” (Περὶ πράσεως καὶ ἀγορασίας, ἐγγράφου καὶ ὀγράφου, καὶ ἀρραβώνων αὐτῶν), containing only two rules;⁸ 2) Chapter XIV of the *Procheiron* entitled “On buy and sell agreement” (Περὶ πράσεως καὶ ἀγορᾶς) with 11 articles;⁹ 3) Chapter XXIII of the *Epanagoge/Eisagoge* under the title “On buy and sell agreement” (Περὶ πράσεως καὶ ἀγορασίας), containing 21 provisions;¹⁰ 4) the whole Book XIX of the *Basilika*.¹¹ Taking the abovementioned Byzantine rules on sale contract, Matheas Blastares in his *Syntagma* created chapter A-4, under the title “On buying and selling” (Περὶ ἀγορᾶς καὶ πράσεως, Ο κοуплиенїи и продањи), with 14 provisions taken from the *Ecloga*, *Procheiron* and *Basilika* (Νόμοι πολιτικοί, Ζακονїи градсцији in Serbian translation).¹² The provisions express the rules of Graeco-Roman

7 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 44; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

8 Ed. Burgmann, p. 204.

9 Ed. Zepos, vol. II, pp. 152–154.

10 Ibid., pp. 309–312.

11 *Basilika* XIX, ed. Scheltema, Van der Wal, and Holwerda.

12 Edition Ralles and Potles, pp. 76–78; edition Novaković, pp. 79–81.

(Byzantine) law on sale contract. However, only two sale contracts written in old Serbian survive: a) a certain Dobroslava, with her children, sells her house in the city of Prizren to a certain Mano, brother of Dragitza (1346–1371). The contract is also known under the title “*Tapiya* from Prizren”;¹³ b) a certain Radosava Mirković sells her house in Trepča to the monastery of Saint Paul (19 January 1438).¹⁴

The first preserved sale contract consists of three parts: introduction or *protocol* (Early Modern English *prothocoll*, Old French *prothocole*, Mediaeval Latin *prothocollum*, from Greek πρῶτος = first and χόλλα = glue, the first leaf glued to a manuscript); text or *corpus*; and conclusion or *eschatocol* (Greek ἔσχατος = last and χόλλα = glue). At the beginning of the *protocol* the names of sellers were mentioned: Dobroslava, her two sons Prvoslav and monk Nikodim, and daughter Raya († Кръсть Доброславинъ, Каросове хтере, † кръсть сына је Първослава, † кръсть дрѹго је сына калѹгера Никодима, † кръсть хтере је Раја).¹⁵ After that the names of neighbours (съмежници),¹⁶ who were Dobroslava's relatives, were cited. The quotation of neighbours is very important: it means that they have renounced their pre-emption rights. Dobroslava says that she is daughter of Karos, but the name of her husband was not mentioned. Probably she was a widow at the moment when the contract was concluded. Beside every name stands a cross (†), what obviously means that all of them were illiterate. In the next line we read: “If there is something to be said [from abovementioned persons] Prvoslav will answer, and the buyer is free” (ако име цю говорити а Първославъ да ѿговорить, а кѹпъцъ да ѿ свободънъ).¹⁷ It means that Prvoslav (one of sellers) would be responsible for eviction—the act of depriving a person of the possession of property which he has held.¹⁸

The text or *corpus* starts with the following words: “I, Dobroslava daughter of Karos, with all abovementioned persons, with love and willingly put the Honorable and Life-Giving Cross to Mano, brother of Dragitza, and we sold him our

¹³ *Tapiya* (Serbian Cyrillic *manuja*) is a Turkish word (*tapu*), meaning land-registry certificate, title deed. Latest edition by Bubalo, *Srpski Nomici*, pp. 250–252.

¹⁴ Ed. Bubalo, p. 250.

¹⁵ The Serbian word is *sumedžnik* (rarely used in modern Serbian), coming from *meda* = boundary (line).

¹⁶ Ed. Bubalo, p. 250.

¹⁷ Taranovski, *Istorija*, vol. III, pp. 110–111. See also M. Živojivović, “Evikcija u Vizantiji i srednjovekovnoj Srbiji” [“Eviction in Byzantium and Mediaeval Serbia”], in *Papers of the Third Yugoslav Byzantine Studies Conference, Kruševac 10–13 May 2000* (Belgrade—Kruševac 2002), pp. 75–84. The author remarks that the provision concerning the eviction stands in an entirely unusual place: before the invocation, right after crosses with the names of sellers and neighbours (pp. 83–84).

home" (ИА Добролава, Каросова ѣти, и с моими више ѡписаними, съ лѫбовию и съ ѵтениемъ, постависмо честни и животвореци † кръсть Мано, Драгичинъ братъ и продасмо мѹ дворъ нашъ).¹⁸ So, beside the names of the seller and buyer, the text emphasizes that the parties to the agreement entered freely, i.e. neither fear nor force was used. The object of the contract was legal and possible of achievement, and the creation of a legal relationship was expressed by the words "we put the Cross" and "we sold". The next lines designate the boundaries of the manor and fix the price—eight livres of silver (Цена би двора того ѿмъ литръ сребра).¹⁹ Transfer of ownership rights was expressed by the following words: "From this day on, let Mano acquire this house as hereditary real estate holder, and let him be capable of giving it as a present, as a dowry, of selling it, giving it for the soul, or swapping it" (Да ѿднъска да си ѿблада Мано ѿнимъзи доворомъ тако и сѹчи бацаникъ, лѫби имати, харизати, прискати, продати, за дѹшѹ дати, али заменити).²⁰ The expression ѿднъска ("from this day on") means that the ownership right on immovable property transfers by the consent of the contracting parties, without any external formality or symbolic act to fix the obligation.

At the end of the text we find a sanction in case of violation of contract. If someone from the sellers would disturb a buyer in his free enjoyment of his ownership rights, no court, imperial or ecclesiastical, would examine the seller's remarks (lit. "not to be listened by any court, imperial or ecclesiastical"). Besides, he has to pay so-called *nalogia* (налогия, from Greek ἀναλογία, lit. "proportion" or "resemblance"), a fine for violation of contract,²¹ to the Church (Кто ли се наре ѿд нась или ѿд нашега рода пос ... некое време Мана, а за ѿньзи дворъ цю мѹ продасмо, да се не чѹє на всакомъ сѹде цареве и цркъвном и да платимо налогију цркви).²²

The final lines of the "*Tapiya* from Prizren" contain 13 names of witnesses, whose declaration under oath is received as evidence of validity of the contract. Two of them, Babitza and Kukitza (Бабица, Куклица), were neighbours, already mentioned in the *protocol*. The remaining 11 are new persons, all male. The document was composed by *nomik* (номикъ, иномикъ, намикъ, from Greek νομικός, name for public notary in Byzantium and Mediaeval Serbia) Nicholas,

¹⁸ Ed. Bubalo, p. 250.

¹⁹ Ibid.

²⁰ Ibid.

²¹ *Nalogia* was mentioned in article 1 of so-called "*Justinian's Law*". Any party to the agreement who was responsible for the cancellation of a contract had to pay a fixed fine, called *analogia*, from Greek ἀναλογία, literally "proportion" or "resemblance" (и да плати гловбу, колико єоуде ѿндѣн оуписана аналогоѓа). Edited by Marković, p. 53.

²² Ed. Bubalo, p. 250.

who was a cleric of the Prizren bishopric²³ and whose signature can be found at the end of the contract († Номикъ Никола ѡд Матере Божије призренске написа и подьписа).²⁴ On the back of the document a cross and signature of the buyer are situated († Мано, Драгичинъ братъ).²⁵

The “*Tapiya* from Prizren” was composed according to Byzantine models of sale contracts. However, it contains neither a date nor place, when and where it was written. This is unusual for Byzantine documents. Perhaps *nomik* Nicholas was neglectful and forgetful?

Our second sale contract is much shorter. The *protocol* contains only the usual invocation: “In the Name of the Father and the Son and the Holy Spirit” (Въ имѣ отъца и сына и святаго дѹха).²⁶ The following text reads as follows:

I Radosava, wife of Radonja Mirković, sold my house in the City of Trepča, to the honorable Saint Paul's monastery and let it acquire [this house] as hereditary real estate holder without any disturbance. During my life I will keep a small room of the house, where me and my sister will find a shelter, and after our death everything will belong to God and to the monastery. And if I Radosava, or someone from my relatives, would have the impertinence to demand something [from the monastery], no court will trust us.

Аво Ѯ Радосава, Радонје Мирковића жена, продадохъ кѹкю мою Ѹ град Ѹ Трепче чистъномѹ монастирѹ Светог Павла йскомѹ, да имъ є Ѹ баципо Ѹ в’чни никимъ нештемлемо. А за муга живота ако в’дѹ къдъ вези, да имамъ ѿт кѹкю єд’ње к්еларъ где кю прибегнѹ с сестромъ, а по съмръти нашон в’се да є Божије и монастир’ско и ино цио в’дѹ. А ако ли виј се Ѯ Радосава раскаавши или кто ѡдь моихъ дрѹзинѹвши цио поискати, да мѹ не в’рованно ни на єдној правде).²⁷

At the end of the document we find the names of four witnesses: “chief priest” (*protopop*) Nicholas, Božićko Milenović, Ivan “urbarar”²⁸ and Prijezda Milmanović (А томѹ свѣдоци: протопопа Никола и Божиќ’ко Милењовић, Иванъ Јубараръ и Пријезда Мил’мановићъ). The contract contains the exact date of pro-

²³ On his personality see Bubalo, *Srpski nomici*, pp. 114–116.

²⁴ Ed. Bubalo, p. 251.

²⁵ Ibid.

²⁶ Ibid., p. 260.

²⁷ Ibid.

²⁸ *Urbarar* (Јубараръ) was a civil servant who gave a concession for exploitation of mines.

mulgation (19 January 1438) and the signature of *nomik* Gunjan (А ћвози се записа мѣсцеца генара .С. дњи, а въ лѣто .SI. сътно .MS. лѣтв. ІА НОМИКЪ ГОУПИАН писаћи и сведокѹ).²⁹ As distinguished from the “*Tapiya* from Prizren”, Radosava’s sale contract does not mention the price or the moment of transfer of ownership rights. Besides, Radosava instituted in the contract the servitude of lifelong use of a small room. *Nomik* Gunjan did not quote all owner’s rights, but used the general formula “let it hold [the house] as hereditary estate holder” (да имъ є ђ баџинѹ вѣчнѹ). The sanction does not provide for payment of a fine. Finally, the fact that the contract was concluded by a married wife proves that women in mediaeval Serbia possessed full legal capacity.

Although we dispose with only two sale contracts, Serbian charters very frequently mention property acquired by a purchase agreement. The most common were cases when the monarch bought land from one monastery wanting to give it as a present to another monastery. For example, King Milutin bought a piece of land (1313–1316) close to the monastery of Hilandar for the security of the Church of Ascension on *pyrgos* in Chroussia (Сии же коматъ и мер’тиќь оуставленъ бысть изволениемъ и ћв’цинимъ з’говорениемъ по воли, а не по ноужди, игоумена и баџи и всегда с’бора дому Светыне Богородице Хилан’дар’ скыни, рекъше, яко и коуплено бысть кралевствомъ ми ћад, нихъ).³⁰ The same King bought for the same *pyrgos* three more pieces of land from the same Hilandar monastery. The land was paid for by 1800 perpers (И з’говоривше се вси, продаše келни кралевства ми Взгнесению пиргоу иже на мори .Г. комате ... И тези .Г. комате купи кралевство ми съ старцемъ Симешномъ за тисоуџиоу и ћасмъ съть перперь).³¹ King Stefan Uroš III Dečanski bought Mountain Oujezdna from Holy Mountain or Gradatz monastery for 100 sheeps with lambs (1330), and gave it as a present to the monastery of Dečani (И да кралев’ство ми пан’дократопоу планине које соу надъ Дѣчани в’се ци је истало за христовоуљемъ светогорьскимъ и градьскимъ. тоуигијере коупихъ Оујезднуоу за .р. ћв’ци с’тагнци).³² Tsar Stefan Dušan bought places called Livade and Paliokometitza for 1760 golden coins, with the intention of giving it as a present to the monastery of Hilandar (продаше ми выше реченьюое мѣсто Ливадѣ и Паликометицоу ... за #ауђ 3латаиць).³³

²⁹ Ed. Bubalo, p. 260. *Nomik* Gunjan lived in Trepča in the first half of the 15th century. See Bubalo, *Srpski nomici*, pp. 122–123.

³⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 441.

³¹ Ibid., p. 517.

³² *Dečanske hrisovulje*, ed. by Ivić and Grković, p. 127.

³³ Novaković, *Zakonski spomenici*, p. 417, para. II.

For the same reason monarchs bought real estate from natural persons (individuals). For example, King Milutin bought (1300) from a certain Kostadin, son of Lipsiot, and Andrian son of *kyr* Theodor, and from *kyra* Kalie, sister of Theodore and from her brother Theodore, several places in the city of Skoplje and its region, and gave it to Saint George's monastery (И кѹпи կралјевство ми ѿ Костадина сына Лип'чиштова, и ѿ Ап'дриана, сына кура Оеѡдорова, и ѿ кура Калије, сестре Оеѡдорове и ѿ брата ѹе Оеѡдора, иже имѣахъ мѣста ѿ Скопи градѣ и въ ѿвласти Скоп'скои).³⁴ In the charter presented to the monastery of Saint Archangels Michael and Gabriel, the house in Skadar, bought by Queen Helen, was mentioned (И коуќка ѿ Скадарѣ којо е кѹпила կралица Елена).³⁵

Serbian charters mention cases when sale contracts were concluded between private persons, as well. For example, in King Stefan Dragutin's chrysobull presented to the monastery of Hilandar (1276–1281), the vineyard in Prizren in Biluša being bought by Budimirci Pravoslavić from an unknown villager was mentioned (И виноградъ ѿ Прызрѣнѣ ѿ Билоуши, кои соу билы коупилы ѿ метохъиского ѹловѣка, Боудымирци Праволавыкы).³⁶ King Dušan's charter issued in favour of the monastery of Treskavac (1335)³⁷ testifies that the object of trade was the church of Saint Nicholas in the village of Hlerine, sold by Vlach's bishop, with all men, vineyards, fields, and watermills, and with all regions and rights (Црква ѿ Хлеринѣ светии Никола, ꙗо продађе влашьки пискоупъ, съ людьми, и съ виногради, и съ нивиемъ и съ водѣничиемъ, и съ въсю областю и правинами).³⁸ In King Dušan's Chrysobull in favour of the elder Gregory (Grigorije), it was said that the monk Gregory bought back the place of Koriša, where he built the church (И си чист'ни и блажен'ни и прѣподобни стаѓ'ць Григорије կралјев'ство ми говори како ѡесть црквь съзидалъ въ мѣстѣ рекомѣмъ Кориши, съ троудомъ и ѿткоупомъ).³⁹ In the list of estates of the monastery of Holy Virgin in Htetovo or Tetovo (1343),⁴⁰ we find an interesting case:

34 Mošin, Ćirković, and Sindik, *Zbornik*, p. 318.

35 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 100.

36 Mošin, Ćirković, and Sindik, *Zbornik*, p. 268.

37 The monastery of Treskavac (Macedonian *Treskavec*, Serbian Cyrillic *Трескавец*), dedicated to the Mother of God, is situated on the rocky Mount Zlatovrv, 8km north of the city of Prilep, in North Macedonia. The monastery was built in the 12th century and rebuilt in the 14th by Serbian Kings Uroš Milutin and Stefan Dušan. In the mid-16th century it was renovated by *knez* Dimitrije Pepić of Kratovo. The monastery possesses a large collection of Byzantine frescoes. However, the monastery was destroyed by a fire in the early 2010s and, apart from the church, is now in ruins.

38 Novaković, *Zakonski spomenici*, p. 667, para. xxvii.

39 Edited by S. Mišić, *SSA* 12 (2013), p. 23.

40 Tetovo (Serbian Cyrillic *Tetovo*, Albanian *Tetova*, Turkish *Kalkandelen*) is a city in the

"the monastery superior (*hegoumenos*) Isaiye bought Kraimir's vast land with a house lot⁴¹ from Kyura, daughter of Kraimir, and from her sister Yera and her children Vitomir, Leo, Miliya and Roman for 20 *kabao*⁴² of grain, in the year of famine" (Нива оу Царева Стоуденца, Краимиово селище, цо коупи игоумънъ Исаине оу Кюре, краимиове чтије, и оу сестре љен Јере, и оу нихъ дѣтети, оу Витомира и оу Леја и оу Милја и оу Романа, за .В. књевљ жита оу гладно врѣмѣ).⁴³ In a note added later to Tsar Dušan's chrysobull presented to the monastery of Arhiljevitz (10 August 1345),⁴⁴ we can read that a certain Novak Borislavović sold a fourth part of his watermill to *hegoumenos* Đuroman (Δ во про-даде Новакъ Бориславовиќъ иѓумнδ Гюроманδ четврти дѣлъ водѣнице подъ валајвицѡмъ).⁴⁵

In Serbian legal documents the property acquired by a purchase agreement was called *kupljenica* (коупленница), *kiperica* (коупеница) or *kupeničije* (коупеничије). All of these three terms are derived from the verb *kupiti* = to buy, but they are obsolete in modern Serbian. For example, in King Milutin's charter in favour of the monastery of Hilandar, regarding the *kellion* (cell) of Saint Paraskeve in Tmorane (c.1300), *kupljenica* [purchased estate] of sebastokrator Pribo, endower of the *kellion*, was mentioned (коупленница хтифора сијези келије протоставаста Приба).⁴⁶ Giving presents to Saint George's mon-

northwestern part of the Republic of North Macedonia, built in the foothills of Šara Mountain and divided by the Pena River, with a population of 52,915 (the great majority are Albanians).

41 The Serbian word is *selište* (селиште). On the meaning of the word, scholar's opinions are divided. According to F. Miclosich, *Lexicon palaioslovenico-graeco-latinum* (Vienna 1863–1865), p. 836, *selište* means *tentorium*, *habitatio*, *aula* and χώρος. Daničić, *Rječnik iz književnih starina*, identified *selište* with *selo* (village), and his opinion was accepted by Mažuranić, *Prinosi*, p. 1298. Novaković, *Selo*, pp. 106–113, thought that *selište* was a place for conveniently settling. For more details see R. Mihaljić, "Selišta", *ZFFB* 9.1 (1967), pp. 172–224 = *Complete Works, Book IV* (Belgrade 2001), pp. 89–158.

42 One *kabao* = 16 kg.

43 Slaveva, Miljkovik-Pepek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 298.

44 Arhiljevitz (Serbian Cyrillic Архиљевица) is the name of a lost mediaeval village and monastery. Based on Emperor Dušan's charter, Arhiljevitz was situated where the granted villages Podlešane, Izvor and Rućinci lay, on the slopes of Jezer (Kumanovska Crna Gora), between the modern cities of Preševo (South Serbia) and Kumanovo (North Macedonia).

45 V. Aleksić, "Dva prepisa potvrđne hrisovulje Stefana Dušana povodom osnivanja manastira Vavedenje Presvete Bogorodice, zadužbine sebastokratora Dejana u selu Arhiljevici kod Preševa", p. 37. Cf. A. Solovjev, "Ugovor o kupovini i prodaji u srednjovekovnoj Srbiji" ["Sale Contract in Medieval Serbia"], *APDN* 15 (32)/6 (1927), pp. 429–448.

46 Mošin, Ćirković, and Sindik, *Zbornik*, p. 333.

astery near Skoplje (1300), King Milutin says that all hereditary estates and *kupljenice* (purchased estates) within the designated boundaries would belong to the monastery (Что се ће убруђати въноутрь меге вишеписанне, или чија годѣ боуде баџина или коупленица).⁴⁷ In the list of estates of Holy Virgin monastery in Htetovo (1343), the expression *kupljenica* (purchased estate) was mentioned in several places in the document: “close to Stanko’s *kupljenica*” (до коупленице Станкове); “till the *kupljenica* of Dragoman and Velimir” (до коупленице Драгоманове и до Велимирове); “piece of vineyard in Vasilevce, that Radota gave to the church for his soul and from his *kupljenica*” (Коматъ лозина оу Василевцехъ цио даде Радота цркви за доушоу коупленицу си); “close to the priest’s Vlado *kupljenica*” (К и до попа Владове коупленице).⁴⁸ Tsar Dušan, with the consent of his nobleman Župan Radoslav (съ хотѣниемъ любимаго властелина царьствомъ Радослава жупана), gave as a present to Saint Archangel’s monastery (1348) the village of Klčevište with all nobleman’s *kupljenica* (и с коупленициами).⁴⁹ Article 174 of Dušan’s Law Code mentions “Workers on the land who have their own inherited property, land, vineyards or purchased estate” (Людѣ земљане кои имаю свою баџину, землю и виноградъ, и коупленице).⁵⁰

The expression of *kupenica*, meaning purchased estate as well, was mentioned in King Stefan Dečanski’s charter in favour of the Episcopacy of Prizren (April 1326): all that the King gave to the monastery was “with hereditary estates and *kupenice*” (з’баџинами и с коупенициами).⁵¹ The same word can be found in Tsar Dušan’s charter to the lesser lord Ivanka Probištitović (1350): The Tsar says that Ivanka can use his estate as every *kupenica* (како всакоу коупеницу),⁵² i.e. as any property acquired by purchase agreement.

The term *kupeničije*, in the meaning of purchased estate, can be found in the charter of King Dušan for the church of Virgin Mary Perivlepta in the city

⁴⁷ Ibid., p. 321.

⁴⁸ Slaveva, Miljković-Pepek, and Mošin, *Spomenici na srednovekovnata i ponovata istorija na Makedonija*, vol. III, pp. 185, 287, 293, 295.

⁴⁹ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 98.

⁵⁰ Burr, “The Code of Stephan Dušan”, p. 533; Novaković, *Zakonik*, p. 136; *Zakonik cara Stefana Dušana*, vol. III, p. 150. Cf. B. Marković, “Ugovor o kupoprodaji prema zakonodavstvu cara Stefana Dušana” [“Contract of Sale According to Tsar Stephan Dušan’s Legislation”], in *Srednjovekovno pravo u Srbu u ogledalu istorijskih izvora*, *Zbornik radova sa naučnog skupa održanog 19–21. marta 2009, Srpska Akademija Nauka i Umetnosti, Odjeljenje društvenih nauka, Izvori srpskog prava XVI* [Medieval Law in Serbian Lands in the Mirror of Historical Sources, Proceedings of the Scientific Conference Held from March 19 to 21, 2009, Serbian Academy of Sciences and Arts, Department of Social Sciences, Sources of Serbian Law XVI] (Belgrade 2009), pp. 57–75.

⁵¹ Edited by S. Mišić, *SSA* 8 (2009), p. 17.

⁵² Edited by V. Aleksić, *SSA* 8 (2009), p. 73.

of Ohrid (1343–1345). The King says that he gave several villages to the church, with their *kupeničje* and all rights („Радовлишћа цркве света Богородица с купеничјем и с већима правилама“).⁵³ King Stefan Dušan gave his nobleman Rudl, with all his property, to the monastery of Hilandar (28 March 1343). Among the other goods that Rudl has acquired, *kupeničje* (purchased estate) was mentioned as well (и с купеничјем).⁵⁴ In Tsar Uroš chrysobull to Kyril, Metropolitan of Melnik (May 1356), we read: “And purchased estate (*kupeničje*), that Metropolitan Kyril bought himself” (И купеничје що си јесте купиљ самъ митрополитъ Кирилъ).⁵⁵ Examples are numerous, and we cannot quote them all.

In the Greek charters of Serbian monarchs, the property acquired by a purchase agreement was designated by the terms ἐξ ἀγορᾶς, ἐξ ἀγορασίας, and once the verb ἀγοράζω = I buy, was used in the past tense (ἀγόρασεν τὴν στάσιν = he bought the estate). We shall quote several examples. 1) King Dušan's chrysobull in favour of Saint John the Forerunner monastery on Mount Menikion (October 1345) mentions “the land near Livadia acquired by purchase agreement from Melachrini” (γῆ εἰς τὸ Λιβάδιον ἐξ ἀγορᾶς ἀπὸ τῆς Μελαχρινῆς). 2) In Tsar Dušan's chrysobull presented to the monastery Vatopedi on Holy Mountain, we read: “and also everything that gave as a present my imperial courtier military judge Mavrophoros, from his dowry and from hereditary estate and from purchased estate” (καὶ ὅσα ἀφέρωσεν ὁ οἰκεῖος τῇ βασιλείᾳ μου κριτής τοῦ φοσσάτου ὁ Μαυροφόρος ἀπό τε προικὸς αὐτοῦ καὶ γονικότητος καὶ ἐξ ἀγορασίας). 3) In the first chrysobull issued by Tsar Simon Uroš to the monastery of Saint George in Zavlantia in Thessaly (August 1359) it is written: “estate that bought Koteanitza and gave it to the monastery community” (τὴν στάσιν, ἔτερον ὅπερ ἡγόρασεν ὁ Κοτεανίτζης καὶ δέδωκεν εἰς τὴν μονήν).⁵⁶

Acquisition of ownership by purchase agreement in the Greek charters of Serbian rulers differs from the other derivative acquisitions. Ownership acquired by hereditary estate was designated by the expression ἀπὸ γονικότητος (γονή = offspring, descendant, seed); acquired by gift ἀπὸ προσενέξεως (from the verb προσφέρω = I offer, I present); acquired by dowry ἀπὸ προικός (προῖκα, προῖξ = dowry). Among derivative acquisitions of ownership in Greek charters we can find two more terms: κτάομαι = I obtain, I receive, I gain, and χαρίζω = I present, I give from love, I donate.⁵⁷

53 Edited by V. Aleksić, *SSA* 14 (2015), pp. 25–26.

54 Edited by S. Mišić, *SSA* 9 (2010), p. 78.

55 Edited by R. Mihaljić, *SSA* 2 (2003), p. 88.

56 Solovjev and Mošin, *Diplomata graeca*, pp. 12, 142, 220.

57 See S. Šarkić, “Sticanje svojine ЕΣ ΑΓΟΡΑΣ u grčkim poveljama srpskih vladara” [“Acquisi-

As soon as the price was fixed the contract would have been complete. The price had to be definitive, genuine, and in coined money. However, in some cases the payment was in kind. For example, Kraimir's land with house lot was sold, in the year of famine, for 20 *kabao* of grain, one bellow of cheese and half a slab of bacon (за .В. къвъль жита оу гладно врѣмѣ, и пронузесмо мѣхъ сиренниа и полоутикъ сланинѣ).⁵⁸ Parties to the purchase agreement could fix the price freely (да си продадо и куплю свободно),⁵⁹ but in some cases the price was already designated by law or by order of the State authority. In the oath of Ragusan Doge Andrea Dauro and the Community of Dubrovnik to Serbian King Uroš I (August 1254), it was ordered that grain and wine in Dubrovnik had to be sold to Serbian citizens for the same price as to Ragusans (Жито и вино кое се нариче продавати Ѹ градѣ, да се не подражи твоихъ ради люди, ны да се продаде тако нашимъ людемъ тако и твоимъ).⁶⁰ King Dragutin's treaty with Dubrovnik (1277–1281) says that Ragusans must sell wine without water and honey according to the price fixed in the market-town of Brskovo (Дало є кралевство ми милостъ Дубровъчамъ да си продадо вино безъ водѣ и медъ Ѹ цѣни Ѹ Брсковѣ Ѹ трыгъ кралевства ми).⁶¹

The payment of the agreed price was the performance (*solutio*) of the sale contract. However, if the whole amount of the agreed price was not paid, the seller could terminate the obligation. Such a case was provided in article 8 of so-called "*Justinian's Law*": "If someone sells a field or vineyard or something else, and receives half of the price and after that he changes his mind, and does not want to sell, he has to return the money and take his own; if more than a half of the agreed price was given, then the contract is considered as valid" (Аще кто продаст нивоу или виноградъ, или ино что и оужме вт цѣне пол, и паки се оупомене да не продада, да врати цѣноу, а свое да си оужме впеть аще ли се нарие, ере юест дано и мало выше вт полъ цѣне, да стонгъ коуплѧ како юест и продана).⁶²

Earnest money (down payment, *arra*, *arrha*, ἀρραβών, драбоунь, драбонь) is a sum of money paid by a buyer at the time of entering a contract to indicate the intention and ability of the buyer to carry out the contract. At the begin-

tion of Ownership εΞ ΑΓΟΡΑΣ in Greek Charters of Serbian Rulers"], in *ΠΕΡΙΒΟΛΟΣ tome 1, Mélanges offerts à Mirjana Živojinović* (Belgrade 2015), pp. 299–308.

⁵⁸ Slaveva, Miljković-Pepek, and Mošin, *Spomenici na srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 298.

⁵⁹ King Stefan the First Crowned's treaty with Dubrovnik, 1214–1217. Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 87.

⁶⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 216.

⁶¹ Ibid., p. 272.

⁶² Edited by Marković, p. 55.

ning of Chapter A-4, dedicated to the sale contract, the *Syntagma* of Matheas Blastares has a short provision on earnest money: if the buyer was responsible for the breach of contract, he would lose his down payment. If responsibility was on the seller, he had to give a double down payment (ἀρράβωνος δὲ δοθέντος, καὶ διαλυμένης τῆς πράσεως, εἰ μὲν ὁ ἀγοραστής εἶη ὁ διαλύων, ἀπόλλυσι τὸν ἀρράβωνα· εἰ δὲ ὁ πράτης, διπλοῦν ὃν ἔλαβεν ἀρράβωνα παρασχεῖν ἀναγκάζεται, ἀραβονού ϰε δαν' ου βιβ' ψου, и раздрѣшаюштихъ се коупли, аште оубо коупьцъ юстъ раздрѣшаи, погоубаиеть арабонъ; аште ли продавыцъ, соугуубъ иже приель юстъ арабонъ подати поноуждаиеть се).⁶³ The rule was taken from Justinian's *Institutes*.⁶⁴ Serbian legal sources have no provisions on earnest money.

Ius protimeseos (προτίμησις, literally “preference”) is the right of pre-emption of a landlord in a case where the tenant wishes to dispose of his rights as a perpetual lessee. Among the Serbian legal documents only two articles of so-called “Justinian's Law” mention pre-emption right:

- Article 10 “If someone wants to sell something in the village, let it sell not to a stranger, but to the peasant from the same village, because such a purchase would be not valid and a buyer would have no benefit, only to receive back [money] that he gave” (Аще кто Ѿоуетъ продати οу селѣ каковоу любо веци, да ю не продаст надвориемоу чловѣкоу, нь тогдзи села селанину, понеже не крѣпка юстъ Ѿопла таи, whižи коупьцъ не имать ползоу развѣ приети ци даль).
- Article 11 “If someone sells a shed, or land, or vineyard, or mill, he has to inform on that his relatives and his neighbours, whether they want to buy; if they do not want to buy, let it sell to a stranger, who wants to buy; if he does not inform his relatives and neighbours, those relatives and neighbours in ten years' time can dispute the purchase and give back the money and take the estate; after ten years nothing to be wanted” (Аще кто продаваиеть хлѣвиоу, или нивѣ, или виноградѣ, или млинъ, прѣжде да ѿбличить ближникомъ, и ѿбыци никомъ да whižи коупетъ. Аще ли whižи не въходитъ Ѿопити а whižи да продастъ надвориемъ кто Ѿоуетъ коупити. Аще ли не ѿбличить ближникомъ, и ѿбыци никомъ нь продастъ штаи надвориемъ чловѣкоу да

63 Edition Ralles and Potles, pp. 76–77; edition Novaković, pp. 79–80. Serbian translators took the Greek word *arabon* or *aravon* from Latin *arrha*. From the 14th century in the Adriatic maritime towns we find a new term: the Italian word *capara* (from *capere arrhas* or *cape arrham*), which prevails in modern Serbian and Croatian. See Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 418–419.

64 *Iust. Inst.* III, 23. Cf. *Procheiron* XIV, 1, Zepos, vol. II, p. 152.

сѹ волни вбѹцици и близници сѹпротивити се и цѹноу вратити, а достојанie оузети, а по десетомъ лѹгѹ не искати ница).⁶⁵

Although these two articles were not directly taken from any Byzantine legal compilation, the influence of Byzantine law is evident.⁶⁶

Beside articles 10 and 11 of so-called “*Justinian's Law*”, pre-emption right was indirectly mentioned in the “*Tapiya from Prizren*”: the quotation of neighbours in the text of a document means that they have renounced their pre-emption rights (see above). Saint George's charter (1300) says that neither land nor vineyard within the monastery manor can be sold outside of the monastery manor's boundaries (ни да се продада нива ни виноград изъвънъ).⁶⁷ That unequivocally meant that pre-emption rights were applied on Saint Georges's monastery estate.

As we can see, the pre-emption right was instituted in favour of relatives and neighbours, but only for villagers. There is no information on whether the pre-emption rights were applied to the nobleman class. It seems that it was not possible because a nobleman had no neighbours from the same village: the village was a unit of a nobleman's manor.⁶⁸

2.2 Exchange or Barter

Exchange or barter (*permutatio*, ἀντάλλαγμα, *размена*, *замена*) is the exchange of goods and productive services for other goods and productive services, without the use of money. The agreement to exchange is one of the oldest legal transactions. It is very similar to the contract of sale, so that Roman lawyers belonging to the so-called Sabinian school considered *permutatio* as a kind of *emptio-venditio* (sale). On the other side, followers of the so-called Proculian school proved that *permutatio* and *emptio-venditio* were two separate contracts, pointing out the difference between them.⁶⁹ Provisions on barter

65 Edited by Marković, pp. 55–56.

66 Although not explicitly employing the term *protimisis*, *Novel n4* of Leo VI implies that the right of neighbours to have first refusal on property sales was well-established in Byzantium. Cf. G. Ostrogorski, “The Peasant's Pre-emption Right”, *Journal of Roman Studies* 37: *Papers Presented to N.H. Baynes* (1947), pp. 117–126. See also B. Marković, “Pravo преџе kupovine prema zakonodavstvu cara Stefana Dušana” [“Pre-emtion Right According to the Legislation of Tsar Stefan Dušan”], *IČ* 58 (2009), pp. 63–77.

67 Mošin, Ćirković, and Sindik, *Zbornik*, p. 324.

68 See S. Šarkić, “Sale Contract in Serbian Medieval Law (Concerning the Influence of Byzantine Law)”, in APETHN THN ΚΑΛΛΙΕΤΗΝ, *Mélanges en l'honneur de Kalliope (Kelly A. Bourdara)* (Athens–Thessaloniki 2021), pp. 839–851.

69 Gaius, *Institutiones* III, 141:

Item pretium in numerata pecunia consistere debet. Nam in ceteris rebus an pretium esse possit, veluti homo aut toga aut fundus alterius rei pretium esse possit, valde quaer-

were presented by the redactors of Justinian's *Digests* in the short chapter four of book 19.⁷⁰

Byzantine laws and legal miscellanies contain only a few provisions that treat this old legal transaction. *The Farmer's Law* (Νόμος γεωργικὸς κατ' ἐκλογὴν ἐκ τοῦ Ιουστινιανοῦ βιβλίου) in articles 3, 4 and 5 speaks of exchange of farmers' land. However, the exchange was performed on the basis of customary law rules and not according to the contracts known from Graeco-Roman law. Besides, *The Farmer's Law* does not use the expression ἀντάλλαγμα, usual in Byzantine legislation, but the substantive *καταλλαγή* (conciliation, change) and verb *καταλλάσσω* (I change, I level, I conciliate).⁷¹ The *Ecloga* does not mention explicitly the agreement to exchange, but it contains a provision that forbids "to the Most Holy Church of the Imperial Town" (Ἡ τῆς βασιλίδος πόλεως ἀγιωτάτη ἐκκλησίᾳ) giving real estates on a long lease (emphyteusis), except barren lands; lands can be exchanged only with the Imperial Home (βασιλικῷ

itur. Nostri praeceptores putant etiam in alia re posse consistere pretium. Unde illud est, quod vulgo putant per permutationem rerum emptionem et venditionem contrahi, eamque speciem emptionis venditionisque vetustissimam esse; argumento que utuntur Graeco poeta Homero qui aliqua parte sic ait:

Ἐνθεν οἰνίζοντο κάρη κομώντες Ἀχαιοί,
ἄλλοι μὲν χαλκῷ, ἄλλοι δ' αἴθωνι σιδήρῳ,
ἄλλοι δὲ ρίνοις, ἄλλοι δ' αὔτῃσι βέσσιν,
ἄλλοι δ' ἀνδραπόδεσσι ...

Diversae scholae auctores dissentunt aliudque esse existimant permutationem rerum, aliud emptionem et venditionem; alioquin non posse rem expediri permutatis rebus, quae videatur res venisse et quae pretii nomine data esse, sed rursus utramque rem videri et venisse et utramque pretii nomine datam esse absurdum videri.

Moreover, the price must consist of money, for it is seriously questioned whether it can consist of any other property, as for instance, a slave, a robe, or a tract of land. Our preceptors think that a price can consist of other property, and hence is derived the common opinion that purchase and sale are contracted by exchange of articles, and that this kind of purchase and sale is of the highest antiquity and in proof of their contention they adduce the statement of the Greek poet Homer, who somewhere says:

Here landed Achaean ships in search of wine,
They purchased it with copper and with iron,
With hides, with horned cattle, and with slaves.

Authorities belonging to the other school dissent from this, and think that the exchange of articles is one thing, and purchase and sale another, as where property is exchanged it cannot be determined what is sold and what is given by way of price; and, on the other hand, it is absurd to consider that both articles are sold, and at the same time given by way of price.

70 D. XIX, 4, 1–2, *De rerum permutatione*. The chapter contains only two fragments of the Roman jurist Paulus.

71 Edited by W. Ashburner, "The Farmer's Law", *The Journal of Hellenic Studies* 30 (1910), p. 97; edited by Zepos, vol. II, p. 65.

δὲ οἶκῳ ἀνταλλάττειν καὶ μόνον).⁷² The *Procheiron* does not have a single word on barter, while the *Basilika* of Leo the Wise, in the chapter entitled Περὶ πραγμάτων ἀντικαταλλαγῆς, took the corresponding rules from Justinian's *Digests* and four laws from Justinian's *Codex*.⁷³ The *Ponema Nomikon* (Πόνημα νομικόν), a synopsis of Roman law that is basically a summary of the *Basilika*, done by the famous historian Michael Attaleiates,⁷⁴ does not treat the agreement to exchange, but it contains a chapter dedicated to synallagmatic (bilateral or reciprocal) contracts (Περὶ συναλλάγματος πράσεως καὶ ἀγορασίας καὶ περὶ συνφώνων τοῦ τε πράτου καὶ τοῦ ἀγοραστοῦ συντεθέντων).⁷⁵ The extended version of the *Procheiron* (Αὐξημένο Πρόχειρο, *Procheiron auctum*), created around 1300,⁷⁶ contains a very short chapter on barter, under the title Περὶ ἀνταλλαγῆς καὶ τὶ διαφέρει ἀνταλλαγὴ πράσεως.⁷⁷ The text was taken from the *Basilika* (xx, 3,3), i.e. Justinian's *Codex* (iv, 64,1, the law from the year 238, promulgated in the name of the Emperor Gordian I). The *Syntagma* of Matheas Blastares mentions barter, not in a separate chapter but when it speaks of one of the rights to alienate a thing: "According to the laws alienation of a thing is a transfer of ownership, such as gift, sale, long lease, exchange and similar" (Παρὸ δὲ τοῖς νόμοις, ἔκποίησις μὲν λέγεται κυρίως ἡ μετάθεσις τῆς δεσποτείας, ἥγουν ἡ δωρεά, ἡ πράσις, ἡ ἐμφύτευσις, ἡ ἀνταλλαγὴ καὶ τὰ ὅμοια, Отъ законъ же отложениѣ оуго глаголиуть се иствѣ прѣложенїе владычества, сирѣвъ дарованїе, проданїе, насаженїе, замѣниенїе и подобнаѧ).⁷⁸ However, the Serbian translators of Matheas Blastares' *Syntagma* use the expression *замѣниенїе* (change, exchange) in the meaning of a contract (*συναλλάγμα*) as well. For example, Chapter Γ-12 has the title "How one should not enter into a marriage contract with heretics" ('Οτι οὐ δεῖ γάμους συναλλάττειν μετὰ αἵρετικῶν, ΙΔΙΚΟ ΝΕ ΠΟΔΟΒΑΙΤЬ БРАКА ЗАМѢНОВАТИ СЪ ЕРЕТИКИ').⁷⁹

Although not a single agreement to exchange has been preserved, Serbian mediaeval law mentions its existence. For example, article 18 of so-called "*Justi-*

72 *Ecloga* XII, 4, ed. Burgmann, p. 210.

73 *Basilika* XX, 3,1; XX, 3,2; XX, 3,3; XX, 3,5; XX, 3,6, ed. Scheltema, Van der Wal, and Holwerda, pp. 1006–1007 = D. XIX, 4,1–2; C. I. IV, 64,1; IV, 64,2; IV, 64,3; IV, 64,4.

74 On that synopsis see S.N. Troyanos, *ΟΙ ΠΗΓΕΣ ΤΟΥ ΒΥΖΑΝΤΙΝΟΥ ΔΙΚΑΙΟΥ* (Sources of Byzantine Law) (Athens—Komotini 1999, new edition 2011), pp. 208–210.

75 Zepos, vol. VII, p. 427.

76 See Troyanos, *ΟΙ ΠΗΓΕΣ ΤΟΥ ΒΥΖΑΝΤΙΝΟΥ ΔΙΚΑΙΟΥ*, pp. 285–286.

77 Zepos, vol. VII, p. 340.

78 Edition Ralles and Potles, p. 271; edition Novaković, p. 285.

79 Edition Ralles and Potles, p. 173; edition Novaković, p. 181. See also chapters Γ-15 (Ralles and Potles, p. 181; Novaković, pp. 189–190) and Δ-10 (Ralles and Potles, p. 229; Novaković, p. 241).

nian's Law" says: "If two farmers made agreement to exchange their fields, in presence of two or three trustworthy witnesses, the exchange will be unbroken" (Аще два ѳемлидълатеља междоу собою Ѣговорига се Ѣамћнити нивье, аще боудоутъ междоу имы два или три вѣрнїи свѣдѣтеље, да прѣсивалетъ мѣна непоколѣбимо).⁸⁰ The *Farmers's Law* also speaks of exchange of lands between two peasants (јамћнити нивы) in articles 3 and 4.⁸¹ Naturally, the Serbian text follows the Greek original. In the already mentioned "*Tapija* from Prizren" it is said that Mano (the buyer) has a right to exchange purchased property (among other ways of alienation of a thing).⁸² Almost the same formula can be found in Tsar Simeon's chrysobull, written in Greek, presented to his nobleman John Tzaphas Oursinos Doukas (January 1361). Simeon (Siniša) confirms to John Tzaphas and his heirs the ownership rights on all their estates, saying that they can freely do with the property what they wish, i.e. sell it, give it as a present or as a dowry, exchange it, or leave it by will to God's churches (ἔχειν τε ἐπ' ἀδείας ποιεῖν ἐπ' αὐτά, εἰ τι ἄρα καὶ βούλοιτο, ἥγουν πωλεῖν, χαρίζειν, προικίζειν, ἀνταλλάττειν, θείοις ναοῖς ἀφιεροῦν).⁸³ The exchange (ἀνταλλαγή) of estates was mentioned in several places in Despot John Uglješa's charter settling a dispute between the monastery of Zographou and the Bishop of Ierissos.⁸⁴

However, in Serbian mediaeval law, barter is most frequently mentioned in cases when a monarch, giving land to the Church, exchanges his domains and domains of his subjects in order to encircle a hereditary estate of a certain monastery.⁸⁵ Such a legal transaction has a lot of elements of public law, and it follows the Byzantine models.⁸⁶ For example, King Milutin in the charter in favour of Saint Stephen's monastery in Banjska (1313–1316) says that everything that he gave as a present to the monastery, together with his brother Stefan Dragutin, was his own property, either purchased or obtained by begging or exchanged from the Archbishop or someone else (или ут авога подањь или коупињь или испросињь, или замћенињь, или оу господина архијепископа или оу кога лијбо). A few lines further on the King emphasizes that everything that was acquired by purchase or exchange was done so willingly (коуплjenија и замћне

80 Edited by Marković, p. 57.

81 Edition Radojičić, p. 20; edition Blagojević, p. 50.

82 Edition Bubalo, p. 250.

83 Solovjev and Mošin, *Diplomata graeca*, pp. 236–237.

84 Ibid., pp. 272–275.

85 Taranovski, *Istorija*, vol. III, p. 113.

86 G. Ostrogorski, "Razmena poseda i seljaka u hrисовулji cara Aleksija i Komnina Svetogorskoi Lavri iz 1104. godine" ["Exchange of Estates and Peasants in Emperor Alexios I Comnenos' Chrysobull to Holy Mountain's Lavra from the Year 1104"], *IČ 5* (1955), pp. 19–25 = *Complete Works, Book 2* (Belgrade 1969), pp. 187–195.

вол'не),⁸⁷ meaning with the consent of the other party to the agreement. In the chrysobull presented to the monastery of Gračanitza (1321), King Milutin reports how he took away the village of Banjska from the Holy Virgin Gračanička monastery and gave it as a present to Saint Stephen's Church, but he gave to Gračanitza another church with estates in exchange (а за то дахъ въ замъну црквовъ той близъ цркве Светые Богородице съ всѣми меглами и правими). The King also says that he took away a few Vlachs belonging to the Episcopacy of Lipljan,⁸⁸ and gave them as a present to Saint Stephen's monastery; in exchange he gave some other Vlachs (Иза Влахе Драгобрати које дахъ Светомоу Стефану, дахъ за не замъну єпискоупии липланьской Команице Влахе).⁸⁹ On the demand of Bishop Arsenios, King Stefan Dečanski gave as a present to the Episcopacy of Prizren (April 1326) the land held by the King's villagers, but he did not take the church's land in exchange (И проси ме єпископъ призренски Ареение да моу съединю земято влахомъ на Блатци цио дръже люди кралевъства ми ... а земято црковноу цио соу дръжали власи на Блатци не оузе кралевъство ми сеѓе оу замъну).⁹⁰

The exchange had to be done willingly and compensation just. It was not permitted to a monarch to damage the hereditary estate holder, as can be clearly seen from Tsar Dušan's chrysobull to Saint Archangel's monastery (1348). The Tsar says that he made the exchange of the estates—villages for villages, vineyards for vineyards, mills for mills—with the family Vladojičić, willingly, without any strain and justly (нихъ воломъ и нихъ хотѣниемъ, а не нѣкою ноуждєю,⁹¹ замѣнихъ и дахъ замѣну ... села за села, винограде за винограде, млине за млине).⁹² The same chrysobull confirms that Tsar Dušan took away the city of

⁸⁷ Edition Trifunović, p. 9.

⁸⁸ Lipljan (Serbian Cyrillic *Липљан*, Albanian *Lipjani*) is a town and municipality located in the Priština district of Kosovo. According to the 2011 census, the town of Lipljan has 6,870 inhabitants, while the municipality has 57,605 inhabitants. The Roman city of Ulpiana was located near Lipljan and was named in honour of the Roman Emperor Marcus Upius Nerva Traianus. Lipljan was the seat of the mediaeval Episcopacy of Lipljan, which existed up to the beginning of the 18th century.

⁸⁹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 501, 502.

⁹⁰ S. Mišić, "Hrisovulja Kralja Stefana Uroša III Prizrenskoj Episkopiji" [King Stefan Uroš's Third Chrysobull to the Episcopacy of Prizren], *ssa* 8 (2009), p. 18.

⁹¹ Serbian documents follow their Byzantine models. For example, in the agreement of exchange between *proedros* (*προέδρος*) Nikephoros and the monastery of Docheiariou it was accentuated that the barter was done willingly "without any coercion, use of force, depravity, sham and lie, fear ... or any other reason forbidden by laws" (οὐκ ἔκ τινος ἀνάγκης ή βίας ή δόλου ή συναρπαγῆς καὶ ἀπάτης ή φόβου ... η τῶν ἄλλων ἀπάντων τῶν τοῖς νόμοις ἀπηγορευμένων αἰτιῶν). Oikonomidès, *Actes de Docheiariou*, p. 83.

⁹² Edited by Mišić and Subotin-Golubović, *Svetosarhanđelovska hrisovulja*, p. 89.

Višegrad with villages from the Episcopacy of Prizren, and gave it as a present to Saint Archangel's monastery, but he gave in exchange other villages to the Episcopacy of Prizren. The Tsar emphasizes that the barter was done with the agreement and consent of all clergy (зговоромъ всега збора и расоуждениемъ ... дахъ замѣноу епископии Призрѣнскои и юговѣмъ хотѣниемъ и всега клироса).⁹³ The principles of voluntariness and consent were accentuated in article 43 of Dušan's Law Code, as well: "Neither the Lord Tsar, nor the King, nor the Lady Tsaritsa is free to take estates by force, nor to buy nor exchange, unless the owner freely consents" (Да нѣсть вол'нъ господинъ царь, ни краль, ни госпожда царица никомъ оуゼти бацине по сил'ни коупити ни заменити, развѣ ако си кѣо самъ полюбъи).⁹⁴ In the charter of monk Dorotheos to the monastery of Drenča (2 March 1382), confirmed by Prince Lazar, it is written that neither Prince nor bishop can capture the church's estate, or exchange it by use of force, or abuse the monastery's property in any other way (Щети коли, ли заменити нѣжданиим замѣненіем, или ииїм кїим извѣтом щтрыгнѣти).⁹⁵ In practical life, did we have abuses of principles of voluntariness and consent? In the absence of legal documents it is very hard to say.⁹⁶

2.3 Gift

Gift (*donatio*, δῶρον, даръ) is the act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person without paying for it. Byzantine law took the provisions on gift from the legislation of Emperor Justinian, and it regulated them in detail. The *Procheiron* and its Serbian translation (*Zakon gradski*) contain the following chapters on gift: Chapter vi, "On gifts before the marriage" (Περὶ προγαμιάς δωρεᾶς, О предждане дара); Chapter x, "On gifts between husband and wife" (Περὶ δωρεῶν μεταξὺ ἀνδρὸς καὶ γυναικός, О дарахъ между мужемъ и женой); Chapter xii, "On gifts" (Περὶ δωρεῶν, О дарахъ); Chapter xiii, "On revocation of gifts" (Περὶ ἀνατροπῆς δωρεῶν, О обраченіи даровъ).⁹⁷ Some provisions on gifts could be found in Chapters xxxi and xxxii of the *Procheiron*, i.e. the *Zakonopravilo* of Saint Sabba.

⁹³ Ibid., p. 88.

⁹⁴ Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 39; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

⁹⁵ Edited by Mladenović, p. 181.

⁹⁶ See S. Šarkić, "Ugovor o razmeni (*permutatio*) u rimskom, vizantijskom i srpskom srednjovekovnom pravu" ["The Agreement to Exchange (*Permutatio*) in Roman, Byzantine and Serbian Mediaeval Law"], *ZRVI* 52 (2015), pp. 331–342.

⁹⁷ Zepos, vol. II, pp. 129–133; 144–145; 150–151; edition Dučić, pp. 266–272; 286–288, 296–298; edition Petrović, pp. 273a–276a; 281a–281b; 284b–285a.

The *Syntagma* of Matheas Blastares contains a separate Chapter dedicated to the gift (Δ , Δ-13), entitled “On gifts” (Περὶ δωρεῶν, Ο ΔΔΡΩΣΤΕΧЬ).⁹⁸ Matheas Blastares put only five articles in this chapter, which were taken from *Procheiron*.

The first article issues the rule that every gift is perfect and that it can be revoked only in a case of ingratitude of the donee (Πάσα δωρεὰ τελεία γενομένη οὐκ ἀνατρέπεται, εἰ μὴ ἐξ ὀχαριστίας, В'сако дарованіе съврьшено във'шне не възражаєтъ се разгубъ отъ неблагодаренія).⁹⁹

The second article prescribes which persons were to be considered as ungrateful (*ingratus*, ἀχάριστος, οὐελαγοδαρήν). “Ungrateful” signifies the one who “raises an unjust hand” (*manus impias inferat*, ἡ χείρας ἀδίκους ἐπαγάγῃ, ρογῆς οὐελαγοδαρήν προστρέψῃ) on the donor, who insults him, or who plans any activity against the donor’s life. Ungrateful is, as well, the one who causes by wrongful acts great damage to the donor’s property or who does not respect the agreements which were added, literally or verbally, to the contract of the gift. Such actionable negligence must be proven in court.¹⁰⁰

The third rule prescribes that the gift given by a person under puberty or by an insane person could be revoked, because they were considered to "have no conscience"—meaning that they are not considered to be accountable (Οὔτε ἄνηβος, οὔτε ἄνόνυς δύναται δωρεΐσθαι, ἐν οὐδενὶ γάρ τούτων ἔστι βούλησις, Ни же надорастий ни же безоумны можетъ даровать, ни въ единомъ бо сихъ есть съвестъ).¹⁰¹

The fourth article allows the person under puberty who gave a gift to revoke it when he reaches the age of 25 (when he assumes full legal capacity). In order to do so the court procedure (*ἀγωγὴν ποιεῖσθαι, προς сътворити*) is to be brought within four years.¹⁰²

⁹⁸ Edition Ralles and Potles, pp. 237–238; edition Novaković, p. 250.

99 Edition Ralles and Potles, p. 237; edition Novaković, p. 250.

¹⁰⁰ Edition Ralles and Potles, p. 238; edition Novaković, p. 250. This provision was taken, word for word, from *Procheiron* XIII, 3, and it is related to a law from the reign of Emperor Justinian (530), *Codex Iustinianus* VIII, 55, 10: *Generaliter sancimus omnes donationes lege confectas firmas illibatasque manere, si non donationis acceptor ingratus circa donatorem inveniatur, ita ut iniurias atroces in eum effundat vel manus impias inferat vel iacturam molem ex insidiis suis ingerat, quae non levem sensum substantiae donatoris imponit vel vitae periculum aliquid ei intulerit vel quasdam conventiones sive in scriptis donationi impositas sive sine scriptis habitas, quas donationis acceptor spopondit, minime implere voluerit.*

¹⁰¹ Edition Ralles and Potles, p. 238; edition Novaković, p. 250.

¹⁰² Edition Ralles and Potles, p. 238; edition Novaković, p. 250. This provision was taken from the *Procheiron* as well, but it could not be found in the chapters treating the institution of gift, but rather in Chapter xxxi, 8, under the title "On compensation" (Περὶ ἀποκατάστα-

The fifth article concerns the so-called *donatio immodica* or *inofficiosa* (δωρεὰν ἀμετρον, ΔΔΡЬ ΒΕΖΜΕΡ'ΝЬ), a gift of so great a part of the donor's property that the birthright portion of his heirs is diminished.¹⁰³

Thus, all the basic principles of Graeco-Roman (Byzantine) law referring to the gift are present in Byzantine legal miscellanies translated in mediaeval Serbia. Yet which of these were actually applied? The fact is that not a single contract of gift survives from that time. Mention of gifts can be found in charters which testify on donations of movable and immovable things to churches, monasteries, noblemen and, rarely, villagers. The sovereign mostly gave land in hereditary estate (*baština*), meaning that a donee (the hereditary estate holder) had a full and unlimited ownership right over his manor. However, the property acquired in that way differs from the classical Roman contract of gift as a civil law act.¹⁰⁴ Donations of manors to churches, monasteries and noblemen, given by a ruler, have the characteristics of public law authorisations, and it is related to the complex structure of feudal society.

The Serbian legal sources designate the act of donation by different terms, such as *zapisati* (to note, to record), *priložiti* (to contribute), *podložiti* (to place under), *pronositi* (to bring closer), *darovati* (to donate) and *dati* (to give). Nouns, derived from these verbs, are *zapisanije*, *priloženije*, *prinošenije* and *dar* (gift).¹⁰⁵ The sources mention the expression *harisati* as well, coming from the Greek verb χαρίζειν = to donate from love or from favour.¹⁰⁶

Donations that were given to the Church were irrevocable, as can be seen in the *Typikon* of the monastery of Hilandar (1198), where we read: "What was

σεος, Ο γυετροκενη). Zepos, vol. II, pp. 186–187; edition Dučić, pp. 351–353; edition Petrović, pp. 305a–305b.

¹⁰³ Edition Ralles and Potles, p. 238; edition Novaković, p. 250. Matheas Blastares took this provision from the *Procheiron* as well, but he much abridged the fourth paragraph of chapter XXXII, which is in relation to Justinian's *Novella xcii*, 1, under the title ΠΕΡΙ ΤΩΝ ΕΙΣ ΠΑΙΔΑΣ ΑΜΕΤΡΩΝ ΔΩΡΕΩΝ, *De immensis donationibus in filios*. However, chapter XXXII of the *Procheiron* (Zepos, vol. II, pp. 188–189) does not treat the institution of the gift, but rather the division of inheritance, although it has an unusual title Περὶ φαλκιδίου. On the meaning of the term *falkidios*, i.e. *lex Falcidia*, see the next chapter dedicated to the law of wills and succession.

¹⁰⁴ Roman law considered the gift (*donatio*) as a pact (*pactum*), not as a contract. The term *pacta* was for those agreements that the law does not directly enforce, but which it recognizes only as a valid ground of defence. *Donatio* belonged to so-called *pacta legitima*—pacts which had been made actionable as the result of imperial legislation.

¹⁰⁵ Taranovski, *Istorija*, vol. III, p. 101.

¹⁰⁶ Solovjev, *Zakonodavstvo Stefana Dušana*, p. 424. The author refers to a provision from *Procheiron* XII, 1 (Zepos, vol. II, p. 150), which is: Τῶν δωρεῶν αἱ μέν εἰσιν ἐν ζωῇ γινόμεναι, καὶ πρὸς ζωὴν τὴν χάριν καὶ τὴν εὐεργεσίαν γνωρίζουσαι καὶ τὴν εὐγνωμοσύνην ἐπιζητοῦσαι.

once given to God, could never be taken; who takes [from the Church] is a thief and he will be punished" (ибо једноуци богоу дарованоје не възьимајет' се. възьимајети же, свециен' поокрадеи јестъ. твореи же свециен' поокрасти, имать запрѣщеније).¹⁰⁷ The same idea was more clearly expressed by Stefan Nemanja, the founder of the Serbian dynasty, in the charter presented to the monastery of Hilandar. The final part of the text reads as follows: "And everything that I gave to the monastery in Holy Mountain, not to be requested neither by my sons, nor by my grandsons, nor by my relatives or anyone else" (И въса єлико дахъ манастыреви оу Светоу Гороу, да нѣ трубѣ ни моемоу дѣтетеви, ни моемоу оуно-ууетеви, ни моемоу родимоу ни иномоу, никомоуре).¹⁰⁸ The identical formula was repeated in later charters of Serbian monarchs as well. It should be noticed that the wording "not to be requested by my sons" was especially emphasized. Through this wording the ruler intended to stress that even his heirs could not revoke a gift.

The legal title of manors given as hereditary estates to noblemen was different. As we have already seen, the Emperor could deprive the hereditary estate holder of his manor only in a case of high treason. In all other cases, Dušan's Law Code guaranteed to the hereditary estate holders security of property using the terms "those patrimonies are confirmed" (вацине да соу тврђдѣ).¹⁰⁹ The lord who was the hereditary estate holder could freely consume his property: sell it, give it as a present, or alienate it in any other way, which is unequivocally said in article 40 of Dušan's Code: "and they may be disposed of freely, submitted to the Church, given for the soul or sold to another" (да сѹ вол'ны ными и под црквовъ дати, или за доушѣ вдати, или иномѣ продати комѣ любо).¹¹⁰ It is interesting that the term *harisati* ("to donate from love or from favour to a natural person"), as an alienation right, was not mentioned in Dušan's Law Code. However, in Emperor Dušan's charter to the lesser lord Ivanko Probištitović it is written that Ivanko can dispose with his estate as with any other purchase (*kupljenica*) and he can "submit [his estate] to the Church, or donate from love to anyone" (люби комѣ харизати кѣде мѣ јестъ хотѣније), according to his wish.¹¹¹ The term *harisati* can also be found in Emperor Uroš's charter from 10 April 1357 to the noblemen from Kotor Bivoličić and Bučić.

¹⁰⁷ Edition Jovanović, pp. 110–112; edition Čorović, p. 132.

¹⁰⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 69; edition Čorović, pp. 2–3.

¹⁰⁹ Articles 39, 40 and 43. Burr, "The Code of Stephan Dušan", pp. 205–206; Novaković, *Zakonik*, pp. 36, 39; *Zakonik cara Stefana Dušana*, vol. III, pp. 108, 110.

¹¹⁰ Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

¹¹¹ Edited by V. Aleksić, *SSA* 8 (2009), p. 73.

Emperor Uroš donated the island of Mljet to the abovementioned noblemen, allowing them to alienate it by all the ways of alienation, including donation from affection to someone (χαρίζατι).¹¹² A Greek chrysobull of Emperor Dušan's half-brother Simeon-Siniša, lord of Thessaly and Epiros, confirming on January 1361 the estate of his great lord John Tzaphas Oursinos Doukas, says that Tzaphas can do with the donated lands anything that he wants, including the right to donate from affection to any individual (χαρίζειν).¹¹³

The text of those three charters confirms clearly that noblemen could alienate their property by giving it as a present, because the expression *harisati* (to donate from love, from favour, from affection) is always mentioned as a way of alienation. Therefore, it is hard to explain why article 40 of Dušan's Law Code does not mention the gift as the way of alienation of the hereditary estate. Some scholars consider that it could be an omission of the copyists, because Dušan's Law Code was not preserved in the original text. However it is indisputable that the property acquired by a purchase agreement could be alienated by gift (donation). Maybe the best example we can find is a contract in which Dobroslava together with her children sold her manor in Prizren to Mano (see above). So, having bought the house, Mano acquired full ownership, including the most important property right—the right to alienate a thing (so-called *abusus*). Among the different ways of alienation of a thing (transfer of the property) the author of the document mentions *harisati*—to give a present from affection.

We dispose with a document which mentions a gift between two persons belonging to the villager's class. A monk Savatiye adopts as son the parish priest Bogdan (September 1434), donating to him half of his hereditary estate (church and house). Bogdan and his heirs will acquire all ownership rights on the estate, like all other purchased property, according to the law of Novo Brdo (city statute). However, the new owner will be responsible for potential debts that the church had. The second half of the estate Bogdan will acquire after Savatiye's death, under the condition that he reposes and commemorates him:

Аво иако ја монахъ Саватије примихъ к себј попа Богдана оу съновнѣ имѣ и дадвхъ мѣ и записахъ половинѣ цркве мое баџин'не и половинѣ кљче мое баџин'е џ подградијю, и такои дадвхъ ја Саватије и благословихъ половинѣ вишеречен'не цркве и кљче да ю унъ има и пјегшво дете и џнѣчје и родъ по родѣ џ баџинѣ до века по законѣ града Новога Брда, писимъ нештем—

¹¹² Edited by R. Mihaljić, *ssA* 3 (2004), p. 74.

¹¹³ Solovjev and Mošin, *Diplomata graeca*, p. 236.

лѣмо. Или є која гробнина или є који доходъкъ, все Богѹ и ниемѹ, тъчїю да ми є поменъ, и да ме ѹпокой колико га Богъ наѣчи како то сънъ родителв. И цю беше црквица дружна платапъ и коупи црквѣ како всакѣ кѹпленици ... и записахъ попѹ Богданѹ прѣдъ свѣдоци, до мое съмрти половинѹ, а по мои съмрти Божије и нїегшво все.¹¹⁴

The term *harisati* expressed *donatio inter vivos* (a gift between the living), i.e. the ordinary kind of gift by one person to another. However, in Serbian legal sources we can find several examples of *donationes mortis causa* (gifts in contemplation of death), but this legal act belongs to the law of will and succession, and we shall treat these in the next chapter.¹¹⁵

2.4 Deposit

Deposit (*depositum*, παραθήκη, παρακαταθήκη, καταθήκη, покладъ, похрана) was in Roman law a contract in which a depositor gave a *res* to a depositee to be kept without remuneration and to be returned on demand.¹¹⁶ Special cases of *depositum* were:

- Depositum sequestre*. Where the ownership of a *res* was the subject of litigation, the *res* could be deposited with a third party until the action was settled. The depositor remained the owner of a *res*.¹¹⁷
- Depositum necessarium* or *depositum miserabile*. In the case of fear, ruin, fire, shipwreck (*in metu ruinae incendii naufragii*) or civil disturbance, goods might be deposited. Double damage could be claimed if the property deposited was not returned on demand.¹¹⁸
- Depositum irregulare*. In this case the *res* had to be returned *in genere* (in kind), e.g. money deposited in a bank. Classical lawyers considered for a long time such a contract as *mutuum* (a loan). However, Papinianus pointed out that this is a kind of *depositum* and his opinion was accepted by the lawyers of Justinian.¹¹⁹

The depositor's duties were to pay any expenses involved in the custody of the *res* and to make good any damage caused by the *res*. The duties of the depositee

¹¹⁴ Edited by Bubalo, *Srpski nomici*, p. 258. The document was written by *nomik* Stepan (Stephen).

¹¹⁵ See S. Šarkić, "The Gift in Serbian Mediaeval Law", in *Institutions of Legal History with Special Regard to the Legal Culture and History*, ed. G. Béli, D. Duchoňová, A. Fundáriková, I. Kajtár, Zs. Peres (Bratislava–Pécs 2011), pp. 25–31.

¹¹⁶ D. XVI, 3, 1; *Pauli Sententiae* II, 12.

¹¹⁷ D. XVI, 3, 17.

¹¹⁸ D. XVI, 3, 1.

¹¹⁹ Cf. D. XVI, 3, 24–25.

were: a) to keep the *res* safe and not to use it; b) to return the *res* and its produce on demand without charge; c) to give the depositor any of his rights of action against a person who had caused the loss of the *res*.

The duties of the depositee were enforced by an *actio depositi directa*, in which condemnation brought *infamia* (a loss of one's civic reputation and standing). The duties of the depositor were enforced by an *actio depositi contraria*.¹²⁰

Byzantine law pays special attention to the contract of *depositum*. The *Ecloga* contains Chapter xi referring to the deposit, entitled Περὶ πάσης παραθήκης. The text is:

'Εάν τις δί' οἰανδήποτε πρόφασιν ἡ φόβον παραθήκην παράθηται τινι καὶ συμβῆ τὸν ταῦτα παραλαμβάνοντα ἀρνήσασθαι, ζητουμένου τοῦ κεφαλαίου καὶ ἀποδεικνυμένου αὐτοῦ ψεύστου, κατὰ δίπλαν ἀποδιδότω αὐτὰ τῷ παραθεμένῳ. εἰ δὲ καὶ δεήσει συμφοράν τινα εἴτε ἀπὸ πυρκαϊᾶς ἡ καὶ ἀπὸ κλοπῆς ἐπελθεῖν αὐτῷ καὶ σὺν τῶν τιναὶ ιδίων αὐτοῦ ἀπολέσθαι κάκεῖνα, τηρείτωσαν οἱ ἀκροαταὶ καὶ ἀνέγκητον τὸν τοιαύτην παραθήκην ἐσχηκότα φυλαττέωσαν ὡς ἀκουσίως αὐτὰ ἀπολέσαντα'.¹²¹

As can be seen, the redactors of the *Ecloga* abbreviated all fragments of Roman jurists referring to the *depositum* into only two provisions: 1) if someone for any reason or from fear deposited a *res* in custody, double damage could be claimed if the deposited property was not returned on demand (if a depositee lied that he got a thing);¹²² 2) if the deposited goods perished, either from fire, theft, or any other accident, together with the property of a depositee, the judges had to examine the case and consider whether the depositee was not responsible because he lost the goods involuntarily.

Chapter xviii of the *Procheiron* entitled Περὶ καταθήκης contains 14 rules concerning the *depositum*, and the Chapter xxv from the *Epanagoge/Eisagoge*, with the same title, contains 16 fragments on the same topic.¹²³ However, Mathaeus Blastares in his *Syntagma* incorporated only two fragments referring to the *depositum*, taken from the *Procheiron*, in the short Chapter under the title Περὶ

¹²⁰ See L.B. Curzon, *Roman Law* (London 1966), pp. 141–142. *Codex Iustinianus*, book iv, chapter xxxiv, entitled *Depositū*, contains 12 laws (from 234 till 532) referring to the *depositum*. The fragments of Roman lawyers concerning the *depositum* were presented by the redactors of the *Digests* in chapter iii of book xvi, entitled *Depositū vel contra* (34 fragments). See also *Pauli Sententiae*, book ii, chapter xii, entitled *De deposito*.

¹²¹ Ed. Burgmann, p. 208.

¹²² It could be *depositum miserabile* or *depositum necessarium* of Roman law.

¹²³ Zepos, vol. II, pp. 162–164 and 315–317.

παρακαταθήκης:¹²⁴ 1) the general definition of *depositum*,¹²⁵ and 2) the law on responsibility of a depositor for a loss of a thing in case of *vis maior* (a greater or superior force), *culpa* (fault, neglect) and *neglegentia* (negligence).¹²⁶

The contract of *depositum* was mentioned in mediaeval Serbia mostly in the translations of Byzantine legal miscellanies, while Serbian legal sources mention it very rarely.

In Chapter 48 of the *Nomokanon* (*Zakonopravilo*) of Saint Sabba, entitled “The Selection of Laws that God Gave to Moses”, we find a short title “On depositum” (Ω ποκλάδѣ).¹²⁷ Much more important is Chapter 55 in which Saint Sabba has adopted the complete text of the *Procheiron*. Title xviii “On depositum” (Ω ποκладѣжи) contains 14 fragments translated from the *Procheiron*.¹²⁸ The Serbian redactors of the complete *Syntagma* of Matheas Blastares took and translated into Old Serbian two fragments on *depositum* from the original Greek text: 1) Ποκладъ јесть иже на съхраненіе нѣкомоу даиомо; 2) Аще отъ нашествїа разбоиниць иже покладъ приемыи погубить, не бѣдствують насаждникомъ того погубъль; иже во покладъ приемаи, дѣсти къ томоу и небрѣженїа и лѣности истездаиетъ се развѣ аще речио и ино нѣчтого съгласи се, рекше оуглава бысть.¹²⁹ However, they added one more provision which increased the responsibility of the depositor. The text in Old Serbian is: Прѣмы покладъ, аще не прилежитъ, яко о своемъ, повинънъ юсть (“If a depositor does not keep the *res* as being his own, he is doing a fraud”).¹³⁰

¹²⁴ II-6, ed. Ralles and Potles, p. 404.

¹²⁵ *Procheiron* xviii, 1, Zepos, vol. II, p. 162: Παρακαταθήκη ἐστὶ τὸ παραφυλαχῆ τινι διδόμενον.

¹²⁶ *Procheiron* xviii, 10, Zepos, vol. II, p. 163: Εὰν ἐξ ἐπιδρομῆς ληστῶν ὁ τὴν παρακαταθήκην λαβὼν ἀπώλεσε τὰ παρατεθέντα αὐτῷ, οὐ κινδυνεύεται τοῖς κληρονόμοις αὐτοῦ ἡ ἀπώλεια. ὁ γάρ παραθήκην λαμβάνων δόλον μόνον καὶ φαθυμίαν καὶ ἀμέλειαν ἀπαιτεῖται, εἰ μὴ ὅγτως καὶ ἔτερον τι συνεφωνήθη. Cf. *Codex Iustinianus* IV, 34, 1, a law from the reign of Emperor Alexander, from the year 234.

¹²⁷ Ed. Petrović, p. 251a.

¹²⁸ Ed. Dučić, pp. 315–318; ed. Petrović, pp. 291b–292b. Serbian mediaeval sources use for *depositum* the term *poklad* (поклад, ποκладѣ), now an obsolete word. In modern Serbian the expression *ostava* (остава) is in use, derived from the verb *ostaviti* = to leave, to set aside. The Latin term *deposit* (депозит) is in use as well, especially in juridical terminology.

¹²⁹ Chapter II-6, edition Novaković, pp. 425–426.

¹³⁰ Edition Novaković, p. 426, note 1. The text is an exact translation of *Procheiron* xviii, 10 (ed. Zepos, vol. II, p. 163): Ο μὴ τῆς παρακαταθήκης ὡς τῶν ἰδίων ἐπικελούμενος δόλον ποιεῖ. Cf. D. XVI, 3, 32, *Celsus libro undecimo digestorum: nam et si quis non ad eum modum quem hominum natura desiderat diligens est, nisi tamen ad suum modum curam in deposito praestat, fraude non caret*. According to Solovjev, *Zakonodavstvo Stefana Dušana*, p. 428, the fact that the Serbian redactors of the *Syntagma* added one provision which does not exist in the Greek text is an important proof of the seriousness of Serbian lawyers. They con-

The Serbian legal sources mention the contract of deposit especially in relationships between the citizens of Serbia and the small City-Republic of Ragusa (Dubrovnik), which was the most important commercial partner of the mediæval Serbian State. The remaining documents were written either in Latin or in Old Serbian. We shall quote several examples.

In the contract concluded between the city of Dubrovnik (Ragusa) and the city of Kotor (Cataro), written in Latin (5 June 1279), we can read the following words: *Item volumus, quod tam Ragusini quam Catarini possint facere credentias et reposturas sive deposita.* In the same document, a few lines further down we find the terms: *Item firmamus, quod omnia deposita sive debita.*¹³¹ It seems that the word *depositum* in the quoted text was used as a synonym for a debt (*debitum*). However, in the next chapter, we find the expression *depositum* in its original meaning (*Et de debitis et depositis, factis tempore pacis*).¹³²

More important is a document from 3 July 1281, where the Serbian King's representatives from Kotor received the deposit of Župan Desa, son of King Vladislav, in Dubrovnik:

Quod pro nobis et nomine et vice communis et hominum Catari recepiimus a prenominato domino comite et comuni Ragusii res infrascriptas depositas olim in Ragusio per condam iuppanum Desam filium condam domini regis Ladisclavi et dominam Bellosclavam matrem ipsius iuppani Desae ... Et etiam promittimus et obligamus nos et comune et homines Catari conservare comune et homines Ragusii perpetuo indempnes ab omnibus dampnis et expensis, que possint eis quocunque modo occurtere occasione dicti depositi ... Iste autem sunt res de dicto deposito.¹³³

These words were followed by a long list of deposited objects.

In the documents, written in Old Serbian, beside the word *poklad* (покладъ), used in the translation of Byzantine legal miscellanies, we can find for *depositum* the nouns *postava* (постава) and *pohrana* (похрана) as well as the verb *postaviti* (поставити).¹³⁴

sidered *depositum* as a very important contract; as the *Syntagma* of Matheas Blastares contained only two laws on *depositum*, they remembered that the *Procheiron* has 14 titles and they took one.

¹³¹ Solovjev, *Odabrani spomenici*, pp. 55, para. 6; 56, para. 7.

¹³² Ibid., p. 56, para. 8.

¹³³ Ibid., pp. 60, 61.

¹³⁴ Although the word *postava* is very similar to the term *ostava* (*depositum*), in modern Serbian it means something totally different—*lining*. The verb *postaviti* means today *to place*,

Poklad was mentioned in Tsar Dušan's letter written from the city of Serres (Σέρραι) to the Ragusans on 23 February 1355. The Tsar asked the Ragusan Doge to deliver to his envoys the objects which were deposited with the Ragusan nobleman Maroje Gučetić (тамо послахъ калѣгіе царства ми и ш ними Николицъ Пацровицка по работи царства ми да ўзмѣ ѿ покладъ поставили ѿ Мараја Гочетицкя).¹³⁵

Postava was mentioned for the first time in the letter that the Ragusans wrote to Princess Militza (Милица), a widow of Prince Lazar (6 December 1395), regarding the *depositum* (*postava*) of Župan Nicholas (И ѿ пишете за поставоу јоупана Николе). The same words (and the verb *postaviti*, as well) were used one more time in the letter that Mehmedbeg, the ruler of the Serbian lands, wrote to the Ragusans around 1463. Mehmedbeg said that a certain Radivoj Vrljak came to him, claiming that he left in *depositum*, together with his mother Militza, 400 ducats with the Ragusan goldsmith Stepan (И да ви је оу знание, аво доходи Радивои синъ Николе Врълијасъ тер ми говори, како је поставилъ с своим матерью с Милициом 4 ста дукату оу поставоу оу Степана златара).¹³⁶

Serbian Despot Đurađ Branković left his treasure in *depositum*, to be kept by the Ragusans (25 January 1441), for the reason that the city of Dubrovnik was much safer than any other place in Serbia. Today, we dispose of a very long list of deposited objects made by Ragusan notaries. At the beginning of the document, the Ragusan Doge and all noblemen confirm that they have received from Despot Đurađ in *depositum* the following treasures (Ми кнезъ, властелю и вся опекина властео владоуциаго града Доубровника прымисмо одъ славнаго господина деспота Гюрга господара Српской земли ... оу похраноу ниже речено именовано благо).¹³⁷ After a long list of Despot Đurađ's treasure it was confirmed that the Ragusans received the above listed deposit (више реченоу похраноу). Further on they say that Despot Đurađ can take the treasure whenever he wants, for as long as he lives. After his death, the deposited objects belong to his wife Lady Jerina (Еирънъ), and after her death to her sons; they can take either the whole treasure or everyone of them his own share. However, if they want to take the abovementioned deposit, they have to present the list and the receipt, sealed by the envoys of the Lord Despot (А оу сен име вишереченоу похраноу поставише, а ми прымисмо оу сен име, докде је живъ господинъ деспотъ Гюргъ, да је онъ волѧнъ оузети више реченоу похраноу на неговоу волю и

put, set, while *pohrana* is very rarely used in the meaning of *guarding, storing*, and sometimes of *depositum*, as well.

¹³⁵ Stojanović, *Stare srpske povelje i pisma*, vol. I, p. 67, no. 70.

¹³⁶ Solovjev, *Odarbani spomenici*, pp. 181 and 219.

¹³⁷ Ibid., p. 206.

цио рече одь ніє оучинити. А по неговои самръти негова жена госпога Іерина, а по Іеринини самръти тръма синовомъ неговемъ алли имъ све на за се да оузети или всакомуо на се свои дно оузети; а када где би хоти оузети више реченоу похраноу, да се не може оузети цио не би донесло ови исти записъ и листъ веровани потъ печатю кою соу намъ оставили на листоу господина деспота речени покли-
сарые).¹³⁸

The Law Code of Stefan Dušan does not mention the contract of *depositum*, but article 125 regulates the innkeeper's responsibility (*stanjanin*, *станя-
нинъ*)¹³⁹ for the loss of things:

Towns are not liable to the maintenance of officials. When a countryman come [in a town], let him go to the inn, either small or great, and let him hand over his horse and all that he hath, that the innkeeper take charge for him entirely. And when the guest leaves, let the innkeeper hand to him all that he hath received from him; and if anything be lost, let him pay its full value.

Градовомъ да н'єсть приселицъ. развѣ кони иде жоуплѧнинь да ходи къ станянино, или малъ или велико, да мѣ прѣда конъ и стань въсь, да га съблудѣ станянинь съ въсѣмъ, и къда си поидѣ ип'зїи гость да моу прѣда станянинь въсе цио мѣ боудѣ прїель. ако ли моу боудѣ цио погынѣло въсе да мѣ плати.¹⁴⁰

It seems that article 125 provides for a case of *receptum cauponum*,¹⁴¹ well known in Roman law: the innkeeper is responsible if anything is lost and the guest has a right to claim his goods (*actio in factum*).¹⁴² Constantine Jireček describes an actual case arising under this clause from the records of the courts of Dubrovnik for the year 1405. Five traders from the city arrived at Vučitrn, coming from Priština,¹⁴³ and entrusted their horses and goods to the innkeeper, who took charge of them and locked them up. As a result of an

¹³⁸ Ibid., p. 208.

¹³⁹ The word *stanjanin* is no longer in use in modern Serbian. Today the term *gostioničar* is in use for "innkeeper".

¹⁴⁰ Burr, "The Code of Stephan Dušan", p. 521; Novaković, *Zakonik*, p. 96; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

¹⁴¹ Cf. Taranovski, *Istorija*, vol. III, p. 117; Solovjev, *Zakonik cara Stefana Dušana*, p. 279.

¹⁴² D. IV, 9, 1, *Ulpianus libro quarto decimo ad edictum: Ait praetor: Nautae caupones stabularii quod cuiusque salvum fore reperient nisi restituent, in eos iudicium dabo*. Cf. D. IV, 9, 3: *ex hoc edicto in factum actio proficitur*.

¹⁴³ Both cities are today in Kosovo.

incident relating to the unexpected arrival of a Turk, something was lost. The merchants brought an action against the innkeeper under this clause and won their case.¹⁴⁴

2.5 *Hire*

Hire (*locatio conductio*, μίσθωσις, ΝΑΙΕΜЬ, ΝΑΙΜΟВАНИЕ) was a contract whereby one party (*locator*) agreed to give to another (*conductor*) the use of something, or to perform some service in return for a fixed sum (*merces certa*). Roman law had three types of *locatio conductio*: a) *locatio conductio rei*, in which the *locator* allows the *conductor* the use of a *res corporalis* or *incorporalis*; b) *locatio conductio operarum*, in which the *locator* puts his services at the disposal of the *conductor*; c) *locatio conductio operis*, in which the *locator* puts out work to be performed by the *conductor*.

In Byzantine and Serbian mediaeval law there is no such a distinction. All three types of *locatio conductio* were placed in Chapter xvii of the *Procheiron* under the title Περὶ μισθώσεος (Ω ναимованихъ in Saint Sabba's Serbian translation), which contains 28 rules.¹⁴⁵ However, Matheas Blastares took in his *Syn-tagma* only four provisions from the *Procheiron* and put them in Chapter M-12. The Greek text has the same title as the *Procheiron*, while in Serbian translation we read Ο ναимѣхъ.¹⁴⁶ They run as follows:

- a) “If a hirer (*conductor*, ὁ μισθωσάμενος, ΝΑΕМЬ И Е) of agricultural land (τὸν ἀγρὸν, село)¹⁴⁷ leaves the land without any reason (χωρὶς αἰτίας, кромѣ вины), before the agreed period (πρὸ συμπληρώσεως τοῦ χρόνου, прѣжде съ връшениа врѣмене), he has to pay the rent (μισθόν, НАИЕМЬ) for the whole year”;
- b) “If someone hires a horse to transport a cargo and hurts it because he put burden on it beyond measure, he has to compensate the damage” (Ο μισθωσάμενος ἵππον ἐπὶ τὸ βαστάσαι τι δῆλον, καὶ βαρύτερον ἐπιθεῖς καὶ βλάψας, єнѣхетаи ѡпѣр тѣс blâbъ; Ναиemyи коня иеже понѣсти нѣбуто іаавліен'ю, и тѣжкынше възложивъ врѣдить, повин'иа иестъ о врѣдѹ);
- c) “If someone needs a horse to till a certain place (ἔως ὡρισμένου τόπου, до оуставленуаго мѣста), but he takes or sends it even farther [from that place] and if the hirer sees that a horse was injured or perished (τὴν συ-

¹⁴⁴ K. Jireček, “Stanjanin”, *ASPh* 14 (1892), pp. 75–77. See also S. Šarkić, “Depositum in Roman, Byzantine and Serbian Mediaeval Law”, in *ANTECESSOR, Festschrift für Spyros N. Tropianos*, ed. V. Leontaritou, K. Bourdara, and E. Papagianni, vol. II (Athens 2013), pp. 1587–1594.

¹⁴⁵ Zepos, vol. II, pp. 159–162; edition Dučić, pp. 311–315; edition Petrović, pp. 290a–291b.

¹⁴⁶ Edition Ralles and Potles, p. 373; edition Novaković, p. 393.

¹⁴⁷ The Serbian translator used the word *selo* (село), which usually means village.

βάσαν ἐπ' αὐτῷ βλάβην ἡ θάνατον, прилоучивши се томоу врѣдь или съмрѣ), he has to indemnify the owner of the horse";¹⁴⁸

- d) “The *locator* cannot break a contract before the agreed period without the consent of a *conductor*, even if somebody has offered higher rent (*καὶ ἄλλος αὐτοῦ πλείονα εἰσαγάγη μισθώματα, αἱψε οἱ ίδιοι μπορεῖται τοῦτο βέβαιοςτε* **банимы**), if the hirer pays his rent on time”.¹⁴⁹

So-called “*Justinian’s Law*” does not mention explicitly the contract of hire, but in several articles it speaks of it using different terms. For example, article 13 runs as follows: “If someone gives vineyard or something else to somebody to be cultivated, and if the result was not as promised, then the owner may take back the given thing with no explanation, even if [the hirer] worked hard” (Аще кто даст виноградъ, или ино чю дрѹгомоу да направить да аще не оужврьшишь како се є швѣцаль направити да си є волъ господарь оужети свое без рѣчи, аще и много троуділь юст *wnzi*).¹⁵⁰ Articles 14, 15, 16 and 23 speak of share-cropping (исполи). If someone takes a vineyard in share-cropping (исполи) and, when the time comes, does not prune it and spade it and sprinkle [with powder] it as needed (тере на врѣмѣ не шврѣже и оускопа и шпраши како юст подобно), his effort will be futile (article 14).¹⁵¹ If a sharecropper (исполникъ) changes his mind (раскалаг се) and informs on time the owner of a vineyard that he is not able to work in the vineyard, he will not be responsible if the owner (господинъ винограда) did not cultivate a vineyard (article 15).¹⁵² If the owner of the vineyard went somewhere, and the sharecropper (исполникъ) leaves the vineyard (а си раскалаг се шставить виноградъ) without informing him, when the owner comes back, the sharecropper has to pay double the value of the fruits (article 16).¹⁵³ If a farmer takes land as a sharecropper (Аще дѣлатель оужметь нивоу исполи) and does not cultivate it on time but sows a seed without the cultivation of the soil (ни посѣть сѣмѣ на лице), all the fruits will be taken from him and he will be treated as a liar who lied to the owner of the field (article 23).¹⁵⁴

Serbian charters do not mention the contract of hire. Saint Stephen's chrysobull even forbids that land belonging to the Church can be the object of hire (Земља црквовна ни ѿ бъх ни ѿ подораније ни ѿ съденије, никомоу да се не даде).¹⁵⁵ As we can see, the text does not use the expression наемъ (hire), but

¹⁴⁸ Cf. D. XIX, 2, 30; *Basilika*, XX, 1; *Procheiron*, XVII, 21.

¹⁴⁹ Edition Ralles and Potles, p. 373; edition Novaković, p. 393.

¹⁵⁰ Edited by Marković, p. 56.

¹⁵¹ Ibid., p. 56.

¹⁵² Ibid., pp. 56–57.

¹⁵³ Ibid., p. 57.

¹⁵⁴ Ibid., p. 58.

¹⁵⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

podoranije (подораниј), coming from the verb *orati* (օրաти) = to plough, which designates the position of hirer.

The only legal document that mentions a hire of Church land is the charter of Emperor Stefan Dušan and his son King Stefan Uroš to Jacob, Metropolitan of Serres (1352–1353). Tsar Dušan gave the church of Saint Nicholas to Metropolitan Jacob, and he says that “this land, belonging to the church of Saint Nicholas, nobody can cultivate by force, only those persons who got it from Metropolitan as a part of tithe” (И сиози землю выше писанною цркве светаго Николи никто по силе да ю не тежи, тъкмо комоу ю да је митрополить из десетка).¹⁵⁶

In the Serbo-Slavonic translation of the inventory (*praktikon*, πρακτικόν, from *prasso* = to do, to exact)¹⁵⁷ of Hilandar monastery's estates in a region of Strymon (Struma),¹⁵⁸ we can find the word *abelopahto* (αβελοπαχτό, ἀμπελόπαχτον). Scholars do not agree on the meaning of this term, but it seems that it was rental fee for a vineyard.¹⁵⁹ The document says that in the village of Gradec (Градец) foreign serfs have to pay two perpers for *abelopahto* (Ἐ τομήζδε селе αβελοπαχτό ωδь τόμηζдихъ парикъ .В. перыпере).¹⁶⁰

2.6 Loan

Loan (*mutuum*, *fenus*, δάνειον, զայմ) is delivery by one party to and receipt by another party of a sum of money upon agreement, to repay it without (Roman *mutuum*) or with (Roman *fenus*) interest. As we already saw, Byzantine and

¹⁵⁶ Edited by G. Bojković, *SSA* 15 (2016), p. 94.

¹⁵⁷ *Praktikon* is an inventory listing the taxes, as well as the demesne (or domain) land and paroikos households held by a single individual or religious institution, that an imperial tax assessor (*apographeus, anagrapheus*—ἀπογραφεύς, ἀναγραφεύς) either copied from imperial cadastral records (*thesis* or *biblion*) or compiled on the spot to be transcribed later into such rerecords and delivered to the holder. See M. Bartusis, “Praktikon”, in *ODB*, p. 1711.

¹⁵⁸ Today in North Macedonia. According to G. Ostrogorski, “Vizantijskie piscovije knigi” [“Byzantine Praktikons”], *Byzantinoslavica* 9 (1948), pp. 203–306, the document was published in November 1300 (pp. 216–217).

¹⁵⁹ According to V. Mošin, “Akti iz Svetogorskikh arhiva, III. Hilendarski praktik” [“Acts from Holy Mountain Archives, III. Hilandar Praktikon”], *Spomenik SKA* xcii, drugi razred 70, Belgrade 1939, p. 214. The author thinks that the document was edited in November 1315. Solovjev, in his edition of the text (*Odabrani spomenici*, pp. 161–165), thinks that the document was published in November 1357 or 1372, and he says that the meaning of the word *abelopahto* is not clear. According to him it must be some kind of tax (p. 164, note 5). That is the opinion of Russian scholar T.I. Uspenskiy, expressed already in 1883 (*Materiali dlya istorii zemlevladeniya v XIV veke* [Materials concerning the History of Agriculture in the 14th Century] [Odessa 1883], pp. 40–41), who thought that Hilandar Praktikon was edited in 1346 or 1361.

¹⁶⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 313.

Serbian legal miscellanies treat the matter of loan always in the same chapter with the matter of pledge (see Chapter 12, section 5).

In Roman law, in the case of money, it could be required to pay interest if there had been a special stipulation to that effect.¹⁶¹ The rate of interest under the XII Tables was limited to 12%. In 345 BC this was reduced to 6%. Under Justinian, interest was not allowed to be recovered to a greater amount than twice the principal. Compound (repeated or doubled) interest, so-called *anatocism* (from Greek ἀνά = up, upon, through, over + τοκισμός = usury, from verb τοκίζω = to lend on interest and τόκος = interest, offspring; Latin *anatocismus* or *usurae usurarum*) was forbidden. The rates in Justinian's time were: a) maritime loans: 12% p.a.; b) business loans: 8% p.a.; c) ordinary, non business loans: 6%, p.a.; d) loans to farmers and persons of high rank: 4% p.a.¹⁶²

Under the influence of the provisions of the Scriptures,¹⁶³ the canons of Christian Church councils anathematized the taking of interest as usury (τοκοληψία, lit. "receipt of interest").¹⁶⁴ Following Christian ideology, Byzantine legislation tried to forbid any taking of interest, treating it as usury. Already, the *Ecloga* has not a single provision on usury: neither permission nor prohibition. But the *Procheiron* explicitly forbids the taking of interest as something "without dignity of Christian State and forbidden by the Legislation of God" (ἀλλ' οὖν ὡς ἀναξίαν τῆς ἡμῶν τῶν χριστιανῶν πολιτείας ἀπευκταίαν εἰναι κεκρίκαμεν, ἀτε παρὰ τῆς θείας νομοθεσίας κεκωλυμένην, Νῦ Μύ οὐδοιαχομβιακό οὐ δοστοινα σίδα ηαшего христіанскаго житїа, отмѣтна быти расоудиխомъ іаже вожьстъенныи ӡакономъ възбраниена соуть).¹⁶⁵ The same prohibition was repeated in the *Epanagoge/Eisagoge*.¹⁶⁶

However, the taking of interest became a need of economic life, so the *Novella LXXXIII* of Emperor Leo VI allowed interest with a rate of 4% p.a. (ἀπὸ τρίτος ἑκαστοτῆς, "three-hundredth parts"),¹⁶⁷ and the *Basilika* repeated the provisions of Justinian's legislation.¹⁶⁸ Byzantine legal collections at a later date contain the prohibition of interest from the *Procheiron*, but at the same time the provision from Emperor's Leo VI *Novella*. Such a confusion can also

¹⁶¹ *Cod. Iust.* IV, 32, 22.

¹⁶² *Cod. Iust.* IV, 32, *De usuris* (28 laws); see also Curzon, *Roman Law*, p. 140.

¹⁶³ Exodus, xx, 25; Leviticus, xxv, 36; Deuteronomy, xxiii, 19; Lucas, vi, 35.

¹⁶⁴ Apostolic Canon 44; Canon 17 of the First Council of Nicaea; Canon 10 of the Council in Trullo.

¹⁶⁵ *Procheiron* XVI, 14, Zepos, vol. II, p. 159; edition Dučić, p. 310; edition Petrović, p. 289b–290a.

¹⁶⁶ *Epanagoge* XXVIII, 1, Zepos, vol. II, p. 320.

¹⁶⁷ Edited by P. Noailles and A. Dain, *Les Nouvelles de Léon VI le Sage* (Paris 1944), pp. 280–283.

¹⁶⁸ *Basilika* XXIII, 3.

be found in the *Syntagma* of Matheas Blastares. Chapter Π-11 has a title “On greediness and snatching away” (Περὶ πλεονεξίας καὶ ἀρπαγῆς, Ο λιχοιμετεβε и хищтени), and it exposes the vi rule of Gregory of Nyssa, which says that Saint Apostle called greediness a kind of idolatry (τὸ τῆς εἰδωλολατρείας, идолословъ – женіа видъ).¹⁶⁹ The text does not explicitly mention usury, but it is clear that Saint Gregory makes an allusion to it and forbids it to the clergy. More details on interest are contained in Chapter T-7, entitled “On the prohibition of taking usury to all clerics” (“Οτι τόκους λαμβάνειν ἀπείρηται παντὶ κληρικῷ, καὶ περὶ τόκων, Ἱλαῖκο λιχβы въземати отреченно юсть в'сакомоу причътникоу”). The first part of the chapter exposes the ecclesiastical rules (canons) which forbid the taking of interest to the clergy: xliv rule of Saint Apostles; xvii rule of the First Council; x rule of the Sixth Council; iv rule of Laodicean Council; v rule of Carthaginian Council; and xiv rule of Basil of Caesarea. The second part of the chapter contains secular laws (νόμοι, законы) on interest: 1) prohibition of usury, taken from the *Procheiron* (xvi, 14); 2) rates of interest, taken from the *Basilika*, repeating Justinian's legislation;¹⁷⁰ 3) provision of Roman law that says: if someone pays interest more than was demanded, the surplus will be incorporated into the principal; 4) compound interest (*anatocism*) was forbidden.¹⁷¹

Serbian charters and the Law Code of Stefan Dušan do not mention the contract of loan. However, Tsar Dušan's chrysobull to the monastery of Saint Archangels Michael and Gabriel forbids the monks from loaning money at interest. The penalty would be expulsion (и кто се обрѣте калоугерь ... динаре даје оу каматоу — да се иждене).¹⁷² Beyond any doubt this means that in practical life a loan of money existed and that the borrower had to give interest, but our source does not mention the rates. The same chrysobull uses a word *kamatnik*, which normally means usurer, but the context of the charter excludes this. The text says that “with the Tsar's grace and will, Kesar [Caesar] Grgur gave to the church of Saint Archangels *usurer Dabiživ*, who has to give [to the church] 18 foxes yearly” (И съ милостию и хотѣниемъ царства ми приложи кесарь Григоръ цркви царства ми Аρχαγгелу Дабижива каматника, да даје за годище ил. лицицъ).¹⁷³ It is really difficult to explain why a pious donor whould give to

¹⁶⁹ Edition Ralles and Potles, pp. 430–431; edition Novaković, pp. 455–456.

¹⁷⁰ *Basilika* XXIII, 3.

¹⁷¹ Edition Ralles and Potles, pp. 473–476; edition Novaković, pp. 501–504.

¹⁷² Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 112. For interest the text used the word *kamata* (from Greek κάματος = fatigue, toil, labour), which survives in modern Serbian.

¹⁷³ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 91. Cf. S. Šarkić,

the church a usurer. Obviously, the word *kamatnik* in Saint Archangel's chrysobull had some different meaning, though its meaning today remains unclear. However, we find the word *kamatnik* one more time in Serbian documents: in the charter of Constantine Dragas¹⁷⁴ of 26 March 1388, confirming the estates that his half-brother Dmitar¹⁷⁵ gave to the monastery of Saint Ascension in the City of Štip (today in North Macedonia). We read that a certain Vasilije Budović donated a garden to the monastery, which he bought from the usurer Kalojan (Приложи Василие Буџовиќ врътъ на оног странѣ цю юсть купилъ одъ Калојана каматника).¹⁷⁶

2.7 Commodatum

Commodatum (τὸ εἰς χρήσιν διδόμενον) was the gratuitous loan of a *res* for use. *Commodatum* already existed as a type of contract under Justinian I (D. XIII, 6), manifestly an artificial term that can be distinguished from loan and hire only

"Il contratto di *fenus* e la difesa dei debitori contro l'usura nel diritto medievale serbo (riguardo all'influenza del diritto Greco-Romano)", *Roma e America. Diritto Romano comune, Rivista di diritto dell'integrazione e unificazione del diritto in Euroasia e in America Latina* 40 (2019), pp. 41–44.

¹⁷⁴ Constantine Dragas (Константин Драгаш, Κωνσταντίνος Δραγάσης) was a Serbian magnate who ruled a large province in eastern Macedonia under Ottoman suzerainty, during the fall of the Serbian Empire. His father was the despot and sebastokrator Dejan, who had held Kumanovo-region (today in North Macedonia) under the rule of Stefan Dušan. Constantine's mother Theodora Nemanjić was a half-sister of Stefan Dušan (daughter of Stefan Dečanski and Maria Palaiologina). He succeeded his older brother John (Jovan, Јован), who had been an Ottoman vassal since the battle of Maritsa (1371). Constantine's daughter Helen (Јелена, Ελένη Δραγάση) married Byzantine Emperor Manuel (Μανουῆλ) II Palaiologos in 1392. Their many children included the last two Byzantine Emperors: John (Ιωάννης) VIII (1425–1448) and Constantine (Κωνσταντίνος) XI (1449–1453). Constantine Dragas fell at the battle of Rovine (unknown place, probably near the Argeș River in south-eastern Wallachia, today in Romania) on 17 May 1395, serving the Ottomans, led by Sultan Bayezid I, against Wallachia, led by Duc Mircea the Elder (Voivod Mircea cel Bătrân), and fighting alongside Serbian magnates Stefan Lazarević and Marko Mrnjavčević.

¹⁷⁵ In the text of the charter Constantine calls Dmitar "brother of my lordship, Dmitar" (братъ господства ми Дмитър). According to Bulgarian historian Christo Matanov, Dmitar was Constantine's half-brother: Dejan's son from his first marriage with noblewoman Vladislava. See "Proishod na roda Dragaši (Deyanovich)" ["Origins of the Family Dragaš (Dejanovići)"], *Vekove* 6 (1984), pp. 34–37, and *Knyazevstvo na Dragaši. Kam istorijata na Severo-iztočnata Makedonija v predosmanska epoha* [Principality of Dragaši. Contributions to the History of Northeastern Macedonia in the Pre-Ottoman Epoch] (Sofia 1997), pp. 23, 27, 256–257.

¹⁷⁶ Novaković, *Zakonski spomenici*, p. 766, para. viii. The charter has a signature "In Christ the God the true-believing Lord Costadin" (Въ Христа Бога благовѣрни гостадинъ Констандинъ). *Ibid.*, p. 768.

with difficulty because of the unclear terminology of Byzantines with regard to ownership. In mediaeval Serbia it was mentioned only once: a certain Marená with her sons Kaloyan, Borislav and Radoslav, appoints a certain Staniša as a parish priest of the church of Saint Saviour and lends him in gratuitous loan liturgical inventory—books, vessels and vestments (second half of the 14th century—beginning of the 15th century, 9 March, Sopište near Skoplje). The list of a lent things for use was presented in two separated acts (*И прѣдасмо мѧ: тетрадваньгель новоизъводнъ, .в. комата агириста новоизъводна, и дрѹги агиристъ вѣтъхъ, праќсъсъ, тештокарь, часословъцъ, дамаскинъ, минеи свемѹ годици, и дрѹги минеи ѡдь феръ-фара до сексътемара, и трети минеи, єднъ мѣсецъ катад-нєвни сексътевръ, псалтири, лєтѹргија, молит-вњникъ, .в. триѡда, .в. катапе-таэмѣ, врѣтъ конь Свете Петкe, лозье ѧ Сопицихъ, и дрѹги ѧ Стене*). The final lines of the document contain six names of witnesses and the name of *nomik* Kaloyan, who composed the act.¹⁷⁷ The duties of the lender and the borrower were not fixed.

2.8 Partnership

Partnership (*societas, κοινωνία*) was a contract by which two or more persons, with a common purpose in view, combined their property, or by which one contributed his labour and another his property. In Serbian mediaeval law we can find a special type of partnership in article 19 of so-called “*Justinian's Law*”:

If two farmers put together at sowing time and one partner declares his intention to retire, but the seeds were already sowed, the partnership could not be dissolved. If the farmer, who wants to give up, has already ploughed [a field] again, the other partner has to plough again as well, and after that they can dissolve [the partnership]. If the other side has nobody to plough with, the partner [who wants to give up] cannot abandon him.

Аще два дѣлатеља съдроужига се въ врѣмѣ посѣтанїа и оусхокије єдїна страна ѿтлоучити се. Аще се бѹде и сѣмѣ посѣтало, да се не раздѣлеТЬ. Аще ли есть раздараје ѿпоновилъ, да ѿпонови и дрѹги такожде, потомъ да се раздѣлитъ. Аще ли дроуга не имать с кым кије врати, да га нѣ вольни ѿставити.¹⁷⁸

¹⁷⁷ Bubalo, *Srpski nomici*, pp. 253–254.

¹⁷⁸ Edited by Marković, p. 57.

As we can see, the text does not use the term partnership (*ortakluk* in modern Serbian).

This type of partnership arose from agreement between parties. The intention to create a partnership (*affectio societas*) was free, but its termination was limited.

Other types of partnership known from Roman law cannot be found in mediaeval Serbia.

The Law of Wills and Succession

1 Testate and Intestate Succession

Where a deceased person left a will (*testamentum*) and succession took place according to the terms of that will the succession was said to be testate. Where the deceased person did not leave a will succession was said to be intestate. The general rule of Roman law was that no one could die partly testate, partly intestate (*nemo pro parte testatus, pro parte intestatus decedere potest*).

We only have a small amount of data from the Serbian legal sources on the law of wills and succession: no will has been preserved, and the Law Code of Stefan Dušan regulated intestate succession only in articles 41 and 48. It seems that the commoners' class, living mostly in extended families (or communal households, the so-called *zadruga*),¹ succeeded to their property according to the rules of customary law, while noblemen accepted the provisions of Byzantine law.

In Serbian legal miscellanies, translated from Greek, the institutes of testate and intestate succession were rather thoroughly presented. So-called *Zakon gradski* (Serbian translation of the *Procheiron*) contains the following chapters referring to the law of succession: Chapter 21, "On the will of persons not under the *patria postestas*" (Ѡ засвѣтѣ самовластнѣхъ, Перὶ διαθήκης αὐτεξουσίων); Chapter 22, "On the will of those under the *patria potestas*" (Ѡ засвѣтѣ соуциихъ подъ властнио родитељ своиихъ, Перὶ διαθήκης ὑπεξουσίων); Chapter 23, "On the will of freedmen" (Ѡ засвѣтѣ свободожденыихъ, Перὶ διαθήκης ἀπελευθερωνῶν); Chapter 24, "On the will of bishops and monks" (Ѡ засвѣтѣ епископъ и мниихъ, Перὶ διαθήκης ἐπισκόπων καὶ μοναχῶν); Chapter 25, "On the invalidation of a will" (Ѡ превраџенїи засвѣта, Перὶ ἀνατροπῆς διαθήκης); Chapter 29, "On the codicil, i.e. on the supplement to a will" (Ѡ кодикелъ, рекьшє в испльниенїе засвѣта, Перὶ κωδικέλλου);² Chapter 30, "On heirs" (Ѡ наследницихъ, Перὶ κληρономῶν); Chapter 32, "On division" (Ѡ раздѣлении, Перὶ фалнис-

¹ On *zadruga* see Chapter 15, dedicated to family law.

² In Roman law, the codicil represents a separate document (table) wherein a legacy was entered in case it was not included in a will. However, the *Procheiron* defines the codicil as a supplement (amendment) to a will, being the consequence of insufficient reflection on the side of a testator. *Procheiron* xxix, 1, Zepos, vol. II, p. 183; Κωδικελλος ἔστιν ἐλλιποῦς ἐν διαθήκῃ γνώμης τοῦ διατιθεμένου ἀναπλήρωσις.

δίου);³ Chapter 33, “On disinherited persons” (Ѡ ωτμѣщеныхъ шть наслѣдїа, Перὶ ἀποκλήρων); Chapter 35, “On gifts or legacies bequeathed before or after death” (Ѡ дарѣхъ даюмыхъ въ здѣштѣ или въ животѣ или по съмрти, Перὶ λεγάτων); Chapter 36, “On trustees” (Ѡ приставыцихъ, Перὶ ἐπιτρόπων); Chapter 37, “On when creditors should take action against heirs” (Ѡ томъ когда півдѣбайтъ замодавцемъ потезати наслѣдѣники скончавшихъ се, Перὶ τοῦ πότε δεῖ ἐνάγειν τοὺς δανειστὰς κατὰ τῶν κληρονόμων τῶν τελευτησάντων).⁴ The *Syntagma* of Matheas Blastares placed all provisions on intestate and testate succession in the same chapter (K-12) under the title “On heirs and the disinheritance of sons or parents” (Перὶ κληρονоміас και ἀποκλήρων υιῶν ἢ γονέων, О наслѣдованиї и изгнанію отъ наслѣдства сыновь или родитељь),⁵ incorporating almost all the rules of the *Procheiron*.

2 Intestate Succession (ἡ κληρονομία ἐξ ἀδιαθέτου)

2.1 Byzantine Law

Byzantine law on intestate succession, especially the *Procheiron* and *Basilika*, kept all the basic principles of Justinian's legislation.⁶ However, the intention

3 The Greek term φαλκίδιος originates from the *lex Falcidia*, promulgated in 40 BC, providing for a maximum of three quarters of a person's estate to be bestowed as a legacy, entitling an heir to at least a quarter of the inheritance (Gaius, *Institutiones* 11, 227: *Lata est itaque lex Falcidia, qua cutum est, ne plus ei legare liceat quam dodrantem, itaque necesse est, ut heres quartam partem hereditatis habeant*). Justinian's *Novella* XVIII, 1, issued in 536, provided that this part had to be one-third of the inheritance, if a testator had up to four children, and half if a testator had more than four children. Nevertheless, the term φαλκίδιος was not discarded; see e.g., the heading of the *Procheiron*'s Chapter XXXII.

4 Ed. Dučić, pp. 323, 327, 329, 330, 331, 345, 346, 353, 355, 377, 378, 379; Zepos, vol. II, pp. 167, 170, 171, 172, 173, 183, 188, 189, 203, 204, 205; ed. Petrović, pp. 294b, 296a, 296b, 297a, 297b, 303a, 305b, 306b, 314b, 315a, 315b.

5 Edition Ralles and Potles, pp. 324–329; edition Novaković, pp. 342–347.

6 By *Novella* CXVIII (AD 543) and *Novella* CXXVII (AD 548) Justinian refashioned the order of succession. The result of this was: a) agnation was replaced by a relationship based on blood ties; b) males and females were treated equally; c) a new order of succession appeared, consisting of four classes. Earlier classes excluded later ones and where members of an earlier class were unable or unwilling to accept, persons within the next class could claim.

1) *Descendants*—This class included those emancipated and not emancipated, adopted or natural, male and female. Those who succeeded in the first degree took *per capita*; those in a remoter degree took *per stirpes*. Closer descendants excluded the more remote.

to limit the right of collaterals in a remoter degree to take inheritance is evident. Restriction was usually done in favour of the Church. So, Emperor Constantine VII Porphyrogenitos ordered (*Novella XII*, between 945 and 959) that in the case where there are no heirs of the whole blood, one-third of the inheritance had to be given to the Church (“given for the soul”, δωρεᾶ σθαὶ ψυχῆς).⁷ In 1306, Patriarch Athanasios and the Council (*Synod, Σύνοδος*) of Constantinople, promulgated a decision, confirmed by Emperor Andronikos II Palaiologos (*Novella XXVI*), that from the inheritance of the serfs one-third would be given to the Church (“for the soul”), one-third to the landlord and only one-third to the heirs. If there were no heirs, the inheritance would be divided between the landlord and the Church. A second conclusion of the same Council ordered that in a case of the death of an under age person, who already had inherited from a deceased parent, the inheritance would be divided into three parts: one-third to the remaining parent, one-third to the parents of the deceased parent and one-third to the Church. The provision was valid for all social classes.⁸

2.2 Serbian Sources

The Serbian sources mention only intestate succession of hereditary estates belonging to the nobleman class. For example, King Milutin's charter presented to the Žaretić (Lovretić) family from the city of Bar confirms the right of inheritance of the Žaretić (Lovretić) nobleman family, saying that their descendants had the same right (такојде и краљевство ми потврдии Ловретицемъ Андреји с братињимъ цио имь штъць држаль и стриць имь Маринъ ё матерє краљевства ми тогије да си и шни дрѹже твмјде ётврјденијемъ и заклєтијемъ, докде сѹ вѣрни краљевствѹ ми).⁹

Article 41 of Dušan's Law Code states: “If any lord have no child, or if he have and it die, then upon his death the inheritance remains empty until there be

- 2) *Ascendants and brothers and sisters of the whole blood*—Parents shared with brothers and sisters of the whole blood. A grandparent succeeded only where brothers, sisters and parents did not take. The child of a dead brother or sister represented its parents.
- 3) *Brothers and sisters of a half blood*—Their children could take by representation.
- 4) *All other collaterals*—Those in the same degree took *per capita*. There was no representation.

The next class to take would be husband and wife. They were not included in the *Novellae* of 543 and 548, but were mentioned in this connection in the *Basilika*. See Curzon, *Roman Law*, pp. 125–126.

⁷ Zepos, vol. I, pp. 235–238.

⁸ Ibid., pp. 533–536.

⁹ Edited by S. Božanić, *ssa* 6 (2007), p. 12.

found someone of his kin up to the third cousin,¹⁰ and to him shall the inheritance fall" (Кои властѣлињь, не и оузима дѣце, али пакы оузима дѣцѣ, тере оумрѣ, по єговѣ съмрѣти баџина поуста остане, до гдѣ се ѿбрѣте ѿт ѹегова рода до третїега братѹчеда тѣзи да има єговѣ баџинѣ).¹¹ As we can see, the first heirs were children, male and female. It appears that in Serbia there was no form of Salic Law of non-limited inheritance in the male line.¹² Collaterals could inherit "up to the third cousin", a translation of the Greek term τρισεξαδέλφος, meaning up to the eighth degree of blood relationship. The expression can be found in the *Syntagma* of Matheas Blastares (B-8): "Marriage is allowed in the eighth degree of a blood relationship. It is not forbidden to take the third cousin or granddaughter of the second cousin" (Εἰς γε μὴν τὸν ἡ. βαθὺκὸν προβαίνων ὁ ἔξ αἵματος γάμος, συγκεχώρηται· τὴν γὰρ τρισεξαδέλφην, ἢ τὴν ἐγγόνην τοῦ δισεξαδέλφου λαμβάνειν, Κύριος же степень пронисходен же отъ крьске бракъ процень есть; третию до братоуշедоу или въноукоу в'тораго братоушеада поемати никаково же имать възбраниенїе).¹³

Inheritance without an heir was called "withered" (ѡдоумрѣтна), and it belonged to the monarch. The Law Code of Stefan Dušan does not explicitly define such an arrangement, but in the Tsar's chrysobull confirming the founding of the Episcopate of Zletovo (1 September 1346–31 August 1347),¹⁴ we read: "Kraimir's water-mill which remained withered, My Majesty gave it to the [monastery of] Saint Archangel" (И цю есть водѣница Краимироваѡдоумрѣтна и тогу приложи светою царство ми светомоу Архаггелоу).¹⁵ So, a water-mill that was a hereditary estate of a certain Kraimir remained without heirs. As the Tsar had hereditary rights on it, he took a water-mill and gave it as a present to the Church.

Article 48 runs as follows: "And when a lord dies, his good horse and arms shall be given to the Tsar, and his great robes of pearls and golden girdle, let his

¹⁰ The Serbian word is *bratučed* (Serbian Cyrillic братучед, lit. "brother's child"), and it includes nieces as well as nephews.

¹¹ Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 37; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

¹² See also article 48 of the Code, which permits a daughter to sell her jewels and raiments inherited from her father.

¹³ Edition Ralles and Potles, pp. 128–129; edition Novaković, p. 133.

¹⁴ This document was created as a consequence of a decision made by a State Council held in Skopje in 1347. It was decided to establish the Episcopate of Zletovo with a seat at the monastery of Saint Archangels in Lesnovo, endowment of Despot Jovan (John) Oliver. Zletovo (Serbian Cyrillic Злетово) is today a village in the Municipality of Probištip of North Macedonia.

¹⁵ Edited by S. Mišić, *ssa* 13 (2014), p. 186.

son have them and let them not be taken by the Tsar: and if he have no son, but have a daughter, then his daughter is free to sell or give it freely” (Къда оумрѣ властѣлицы, конь добри и оружиѥ да се даје царѹ, а свита велика бисер’на, и злати погасъ да има сынъ мѹ и да мѹ царь не оузме. ако ли не оузима сына, нѹ има дѹщерь, да єсть том’зин вол’на дѹщери и продати или шдати свободно).¹⁶ The surrender of the horse and arms of a lord on his death to the monarch is what in English law was termed heriot—a customary tribute of goods and chattels, payable to the lord of the fee on the death of the owner of the land. “His good horse” has the meaning of “best horse”, corresponding to the “best chattel” of the English law of heriot. The horse and weapons would be conferred afresh upon his successor, if a male of age.¹⁷ However, article 48 belongs more in a matter of public law.¹⁸

According to some fragments from Serbian charters we can conclude that estates could be inherited even in the commoner’s class. For example, the Dečani chrysobull says that the inheritance right of a certain *protopop* (i.e. “chief priest”) Prohor and his sons and grandsons and great-grandsons was “written and confirmed” (записаниѥ и оутврѣждениѥ протопопѹ Прохорѹ и његовѹ дѣти, и в’ноучинѹ и прѣв’ноучинѹ).¹⁹ In the chrysobull presented to Saint Archangels’ monastery, Tsar Dušan says that he settled some masons and gave them lands as a hereditary estate, to them and to their children (И присели царь-ство ми Ѣзд’це ... и да имъ царьство ми Ѣзмлю ... да си имао синези все оу бациноу и дѣт’ца ихъ).²⁰ We already quoted Saint Stephen’s charter which says “that a widow, who has a little boy, should hold the whole village until her son is grown-up”.²¹ It is perfectly clear that a villager’s estate could be succeeded in the first degree—males only. Collaterals could not inherit because they were mostly living in so-called *zadrugas* (extended families) and they had their own lands.

¹⁶ Burr, “The Code of Stephan Dušan”, p. 207; Novaković, *Zakonik*, p. 42; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

¹⁷ Cf. Burr, “The Code of Stephan Dušan”, p. 207, comment on article 48.

¹⁸ See J. Kovačević, “Član 48 Dušanovog zakonika i insignije” [“Article 48 of Dušan’s Law Code and Insignia”], *Ič 3* (1952), pp. 466–468; I. Božić, “Konj dobri i oružje” (uz član 48 Dušanovog zakonika) [“Good horse and arms” (on article 48 of Dušan’s Law Code)], *Zbornik Matice srpske za društvene nauke 13–14* (1956), pp. 85–92. See also R. Mihaljić, “Konj”, in *LSSV*, pp. 314–315.

¹⁹ Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 264.

²⁰ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 110.

²¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465. See chapter I, 1.

3 Testate Succession

3.1 The Concept of the Will

Though the concepts of will and testament had been known to the Romans from the time of the Twelve Tables, and Roman lawyers discussed this legal institution at large, there is only a single definition of it. It was presented by the lawyers of Justinian at the beginning of the first chapter of book xxiii of the *Digests*, entitled *Qui testamenta facere possunt et quemadmodum testamenta fiant*. This is the fragment from Modestinus from the second book of his *Pandectae (libro secundo pandectarum)*: *Testamentum est voluntatis nostrae iusta sententia de eo, quod quis post mortem suam fieri velit*,²² meaning that a will is the legal statement of a person's wish concerning what is to be done after their death. Modestinus' text also found its way into both the *Procheiron* and the *Basilika*, the Greek text being as follows: Διαθήκη ἐστί δικαία βούλησις ὃν τις θέλει μετὰ θάνατον αὐτοῦ γενέσθαι.²³ Saint Sabba adopted the complete text of the *Procheiron* (Законъ градъски in Slavonic), and in both the Greek and Slavonic texts Modestinus' definition is found at the beginning of Chapter xxi "On the wills of persons not under the *patria potestas*" (Περὶ διαθήκης αὐτεξουσίων, Οι завѣтѣ самовластьныи).²⁴ In Serbian this would be: Завѣтъ је ћесть праћедњији съвѣтъ имъ же ико чоџетъ по съмрти њго быти.²⁵ This rule was likewise incorporated into Matheas Blastares' *Syntagma*, also translated into Serbian, the slightly different Slavonic translation being: Завещаніе је ћесть праћед'но воленіе о иже алије ико чоџетъ по съмрти своему оустројеномъ быти.²⁶

Thus, in transferring the term *will* into Serbian, the translators used both the words **завѣтъ** and **завещаніе**,²⁷ with these terms referring to a promise, a bequest in the general sense.²⁸ The editors of Serbian legal miscellanies

²² D. XXVIII, 1, 1.

²³ *Procheiron* XXI, 1 = *Basilika* XXXV, 1, 1.

²⁴ Zepos, vol. II, p. 167; ed. Dučić, p. 323; ed. Petrović, p. 294b.

²⁵ Ed. Dučić, p. 323; ed. Petrović, p. 294b.

²⁶ Ed. Novaković, p. 217.

²⁷ The exceptions are two surviving wills: one of a peasant from the vicinity of Dubrovnik and the other from Herceg (Duke) Stepan Kosača, dated 20 May 1466, both using the term testament (тесътаненъть, тѣстаменат, variant spelling). See Solovjev, *Odarbani spomenici*, pp. 177, 220, 225. In the will of Vlahuša Kuljašić from Yanina (March 1491), carved in Ston (Italian *Stagno*, today a city and municipality in the Dubrovnik-Neretva county of Croatia) we see the formula: "Vlahuša Kuljašić during his life leaves by will his misery behind himself" (Влахуша Кулашичъ за живота свога опоргчує свою мъку наконъ себѣ). Solovjev, *Odarbani spomenici*, p. 227.

²⁸ Novaković, *Syntagma*, p. 6: Правила же оци своя тѣхъ наименование завѣщаніа (διατάγματα), and p. 16: ии на иже съ прѣзоривыиимъ завещаніемъ (διαθეсей).

moreover synonymously used the Greek calque διατάξη (διάταξις). Therefore, e.g. part Δ-4 of the Serbian translation of the *Complete Syntagma* was entitled Ο χαρέψανη, while in the table of contents the title of that section was marked as Ο ζατέτε, ρεκ' ψε διατάξη ("On wills, i.e. diataxes").²⁹ Article 2 of the so-called "Justinian's Law" begins with the words: Αἴψε κτο διατάξη πιστεύεται ("If somebody writes a diatax for someone"),³⁰ and likewise in the charter of Despot Đurđ Branković, issued in 1428–1429 and confirming the hereditary estate to the great headman (*veliki čelnik*) Radič, it was written: записавши мој оу свон діатас ("written in his diatax").³¹

Almost all provisions of the *Procheiron* on testate succession were incorporated in Matheas Blastares' *Syntagma* and its Serbian translation: Chapter Δ (Δ) - 4, Περὶ διαθήκης, Ο χαρέψανη ("On wills"); Chapter K-12, Περὶ κληρονομίας, καὶ ἀποκλήρων σιών ἡ γονέων, Ο καλέδοβανη ιτιγνανησιο στέβα σύνοντος ουρού ("On heirs and the disinheritance of sons or parents"); Chapter K-38, Περὶ κωδικέλλου, Ο κοδικιελ ("On codicils"); Chapter Φ-1, Περὶ Φαλκιδίου, Ο φαλκιδην ("On the Falcidian Law").³²

3.2 Serbian Sources

Thus, all of the principles of Graeco-Roman law referring to testate succession are present in Serbian legal miscellanies. Yet which of these were actually applied? The fact is that not a single will survives from that time³³ and there is not one article of Dušan's Law Code mentioning this legal institution—though this certainly does not mean that it was unknown in Serbia. "Although probably a large number of inheritances remained undivided as a collective property" ("Мада је вероватно велики део заоставштина остајао у неподељеном задружном власништву"),³⁴ individual principles of free disposition over the property included in a will, typical for Graeco-Roman Law, are apparent in Serbian legal documents.

Article 40 of Dušan's Code proclaimed the right of noblemen to dispose freely of their inheritances, as well as freedom of testamentation, expressed by the formula "given for the soul" (за душу),³⁵ and corresponded to

²⁹ Edition Novaković, pp. 217 and 36.

³⁰ Edited by Marković, p. 53.

³¹ Novaković, *Zakonski spomenici*, p. 334.

³² Edition Ralles and Potles, pp. 206, 324, 349, 484; edition Novaković, pp. 217, 342, 369, 512.

³³ The exception being several wills of villagers from vicinity of Dubrovnik, as well as the will of Bosnian Herceg (Duke) Stepan Kosača, but, strictly speaking, these are not sources of Serbian mediaeval law.

³⁴ Solovjev, *Zakonodavstvo Stefana Dušana*, p. 139 (= 447).

³⁵ Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

the capacity to make a will. In the charter issued on 28 May 1350, by which Tsar Dušan conferred property on the lesser lord Ivanka Probištitović, it was said that Ivanka could submit his property freely to the Church or give it for the soul (за дѹшѹ подь цркву записати).³⁶ Almost the same formula can be seen in the charter of Tsar Uroš issued on 10 April 1357 granting Mljet Island (in present-day Croatia) to two noblemen from Kotor, Bivoličić and Bučić:

In the same way that I, the Tsar, have confirmed hereditary estates to other lords and lesser lords, thus I confirm this to Baset Barinčelo and to Tripo Miho Bučić and their children, to be confirmed forever, whether they want to submit it to the Church as for the soul, or give it as a dowry, or sell it, or give it as a present, or swap it, and they may act fully of their own discretion as with their own hereditary estate.

Како јесть царство ми иним властеломъ и властеличесмъ записало и јтврдило бачине, тако и Басету Баринчелу и Трипету Миху Бјсикю и ихъ дѣцамъ записахъ и јтврдихъ яко да имъ јесть тврдо до вѣка любе подь црквь за дѹшѹ подьписати ј прикино дати, продати, харизати, замѣнити, кѹдѹ имъ хотѣниe, вратити, како и всакѹ свою сѹщѹю бачину.³⁷

The only surviving document where the freedom to dispose by a will was explicitly mentioned is the charter of Despot Đurad Branković issued in 1428–1429 in favour of the headman Radič, stating: “Let the headman Radič have possession of these [villages] during his lifetime and if he wants to leave them to anyone after his death by writing this in his will, either to his child or to someone of his relatives, or he may give it to the Church” (да си ихъ имаа чељникъ Радич оу свомъ животоу, и по свои съмрти комоу што оуехоје оставити, записавши моу оу свои дјатась, или своемоу дјететоу, или комоу отъ своихъ съродникъ, или цркви приложити).³⁸ In the second charter of Despot Đurad Branković, presented in 1429–1430 to the headman Radič, the right to freely make a will is also established, although the word “will” (*дјатад*) is not itself mentioned: “and after his death he may leave it either to a relative of his or to someone else without my lordship’s contest” (а по свои съмрти на кога остави, или на съродника или иного кога, да моу господство ми не потвори).³⁹ The right to make a

³⁶ Edited by V. Aleksić, *ssa* 8 (2009), p. 73.

³⁷ Edited by R. Mihaljčić, *ssa* 3 (2004), p. 74.

³⁸ Novaković, *Zakonski spomenici*, p. 334.

³⁹ *Ibid.*, p. 336.

will, expressed by the formula “to leave to one of the relatives” (или комоу одъ своихъ оставити), was given by the charter of the Bosnian King Stefan Tomaš to the great logothetes Stefan Ratković, presented on 14 October 1458.⁴⁰

We have information, albeit sparse, that commoners (*sebri*) also had the capacity to make wills and that they disposed of their property freely. In all those cases, the property was bequeathed to the Church and monasteries, and the legal operation was expressed by the formulas “given for the soul” (за душу дату) and “given for the grave” (дати за гробъ свои). Saint George's charter (1300) mentioned a certain Kalomen who “gave the field for his grave to the church of Saint Elias” (И даде Каломенъ за гробъ свои црквь Светаго Илию съ нивомъ).⁴¹ In the contract, in which Dobroslava with her children sold her manor in Prizren to Mano (the so-called “*Tapiya* from Prizren”), among other things was written that Mano (the buyer) can give a manor for the soul.⁴² We can find some more information in the inventory of the estates of the monastery of the Holy Virgin in Tetovo (c.1346), e.g.: “The field under Recice between the roads was given by Roman for his grave and for his soul. And the other field, under that one, was given by Oubislav for his grave” (Нива подъ Речицами Междоупотине, цю даде Романъ за гробъ свои и за доушоу свою. И дроуга нива ниже тегере ниве, цю даде Оубиславъ за гробъ). Similarly, the priest Dobrota and brothers Nikolitza and Hranislav bequeathed their fields “for the grave and mass” (за гробъ и за помень). Some of the villagers, having no descendants, bequeathed their land to the Church: “Nanaya gave part of his land for his soul, as he had no descendants ... I, Savdik, having realized that I have no descendants ... am giving the field under Holy Sunday ... in order to be mentioned by the church” (Даде Нанаја комать за доушоу јере немѣше порода ... Азъ Савдикъ видѣвъ јере не имамъ порода ... нъ давамъ нивоу надъ Светомъ Неделомъ шть поути подлоуж'ка ... да мѣ поменоуће црквса). But the document also mentioned one dispute that had arisen from the fact that a certain Strez bequeathed his land to the Church although he did have a male descendant. Strez's son Dragia and son-in-law Dragoslav brought about an action challenging the will (ци јестъ них штыць Стрејзо ... приложиљ за доушоу си) and claimed restitution of the bequeathed property, but “when they appeared in front of judge Dabiživ, they were reconciled with one-another and said: ‘What our father sold and gave to the Church we do not contest but confirm’” (и стоупиши прѣдъ судију Дабиžива, и оумирши и рекоша: “ци јестъ нашъ штыць продалъ и приложиљ црквы,

⁴⁰ Ibid., pp. 344–345.

⁴¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 321.

⁴² See Chapter 13, section 2, on contracts.

ми не потварамо, ни паче пооутврждамо").⁴³ It is obvious that the will of Strez was made in accordance with the governing legal rules of that time and that, therefore, his son and son-in-law did not have any legal ground to challenge it, proved by the expression that they were reconciled with one-another (сумирише) when appearing in court.

There is also some sparse information on the capacity to make a will at the end of article 31 of so-called "Justinian's Law", where we read: "If a husband remains without a child, and his wife dies, than the husband shall not take her property, just [the property] that was given by her own will" (Аще ли мужъ ѿстанетъ бес чеда, а жена умреът, да не възметъ ница разбѣ ѹто мѫ ѿставитъ жена свомъ хотѣниемъ).⁴⁴

A slightly greater influence of Roman law can be observed in the wills of villagers from the vicinity of Dubrovnik. The free disposition over a property is completely in the sense of Graeco-Roman (Byzantine) law, and there is even a case of the disinheritance of a male descendant in favour of a female one. The will of Vlahno Radišević from Ston, made on 8 January 1486, states that Vlahno wished to leave everything "rather to my daughter Nikoleta, from small to large, than to my son Dragoye ... who is separated from me by all means, both by love and by land" (све охочу ћери Николети од, мала до велика, неголи охочу сину момѹ Драгою ... од,длио се је од, мене свимь, како лубавю, тако и иманиемь).⁴⁵

We can further ascertain the acceptance of Graeco-Roman law from the will of Medoye Nikulin, dated 23 February 1392, the beginning of which is as follows: "Medoye the son of Nicholas from the county of Žrnovnica, from Zavrilje, being strongly disabled, but still of good mental health, is going to make his will" (Медое синъ Николинъ из жоупе Жрновничке изъ Завриље, боудоуци оу велики немоћи а оу добри памети, очини свои тесътаменть).⁴⁶ In this case, we have the old principle of Roman Law that mental, not bodily health was required as a prerequisite for making a will. This principle was formulated by

43 Slaveva, Miljkovik-Pepek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 297.

44 Edited by Marković, p. 61. Cf. B. Marković, "Nasledno pravo u Dušanovom zakoniku i u Zakonu cara Justinijana" ["Hereditary Right in Dušan's Code and in the Law of Emperor Justinian"], in *Zakonik cara Stefana Dušana, Zbornik radova sa naučnog skupa održanog 3. oktobra 2000, povodom 650 godina od proglašenja* [Code of Tsar Stefan Dušan, Proceedings of the Conference Held on 3 October 2000, on the Occasion of 650 Years from the Promulgation], ed. Sima Ćirković and Kosta Čavoški, Srpska Akademija Nauka i Umetnosti, naučni skupovi, knjiga CVIII, odeljenje društvenih nauka, knjiga 24 (Belgrade 2005), pp. 67–79.

45 Solovjev, *Odarbani spomenici*, pp. 225–226.

46 Ibid., p. 177.

the Roman lawyer Labeon as follows: *In eo qui testatur eius temporis, quo testamentum facit, integritas mentis, non corporalis sanitas exigenda est.*⁴⁷ This rule was also incorporated into the *Procheiron* and the *Basilika*, its text in Greek being: Ό διατιθέμενος ὁφείλει τὸν νοῦν, οὐ μὴν τὸ σῶμα ἐρρώσθαι.⁴⁸

The same document mentions the institute of Byzantine law called ἐπίτροπος (executor), a person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his death.⁴⁹ At the end of the testament, Medoye Nikulin says: "And the executors are Bogavatz, *comes* [of the county] Žrnovički and Milan Gurinovišt from the city" (А томоу соу притропи Богаваць кнезъ Жръновъничъки и Миланъ Гуриновицъ изъ града).⁵⁰ Four chapters of the Statute of Kotor also mention executors of a will (ἐπίτροποι): Cap. CLXXXVII, "On enactment of executors" (*De constitutione Epitroporum*); Cap. CLXXXVIII, "On authorisation of executors" (*De potestate Epitroporum*); Cap. CLXXXIX, "On Executors of those who leave heirs under age" (*De epitropis illorum qui relinquunt heredes infra etatem legitimam*); and Cap. cxc, "On sales done by executors" (*De venditione epitroporum*).⁵¹

Strictly, all of these testaments cannot be considered Serbian mediaeval legal documents, therefore conclusions on the application of the rules of Roman-Byzantine law in mediaeval Serbia cannot be made with certainty.⁵²

3.3 *Gift in Contemplation of Death*

A gift in contemplation of death (*donatio mortis causa*, δωρεὰ ἐν αἰτίᾳ θανάτου, по съмрти даръ) is a gift under the apprehension of death, as when anything is given upon condition that if the donor dies, the donee shall posses it absolutely, or return it if the donor should survive or should repent of having made the gift, or if the donee should die before the donor. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with the intent that it shall take effect only in case of the death of the giver.⁵³

47 D. XXVIII, 1, 2.

48 *Procheiron* XXI, 2; *Basilika* XXXV, 1, 2. The Serbian translation of the text (ed. Dučić, p. 323; ed. Petrović, 294 b) is: Задвѣциавају їзвѣтъ даљњињ јестъ оумъ їздрањи имѣти а не тѣло.

49 On executors in Byzantine Law, especially in the Holy Mountain's documents, see T. Matović, "Epitrop (ἐπίτροπος)—izvršilac testamenta" ["Epitrop (ἐπίτροπος)—Executor of a Will"], *ZRVI* 51 (2014), pp. 187–214.

50 Solovjev, *Odabrani spomenici*, p. 178.

51 Edition Kotor 2009, pp. 111–114.

52 See S. Šarkić, "The Concept of the Will in Roman, Byzantine and Serbian Mediaval Law", in *FBR, Fontes minores XI*, ed. Ludwig Burgmann (Frankfurt am Main 2005), pp. 426–433.

53 Cf. D. XXXIX, 6, 2; XXXIX, 6, 35, 4.

Two forms of a gift in contemplation of death, known from Roman law, can be found in Byzantine legal miscellanies as well. However, the Greek terminology is slightly different—indicated by the text of the *Procheiron*. Μετὰ θάνατον δωρεά were the gifts given after the death of a donor.⁵⁴ The ownership right of a donee would be acquired in the moment of the donor's death. In the next article, the *Procheiron* mentions ἐν αἰτίᾳ θανάτου δωρεῶ—gifts in contemplation, fear or peril of death,⁵⁵ what is identical with the second form of *donatio mortis causa* of Roman law. The Serbian translation of the *Procheiron* (*Zakon gradski*) follows the Greek original using the terms по съмртвши даръ and въ вине съмртви да дати даръ.⁵⁶ In Chapter Δ (Δ) - 13, dedicated to gifts,⁵⁷ Matheas Blastares does not mention gifts in contemplation of death.⁵⁸

In legal documents written in Old Serbian, we can find some examples which could be considered as gifts in contemplation of death, although the sources do not use this term. In the chrysobull presented to the monastery of Saint Archangels Michael and Gabriel (1348), Tsar Dušan says that his lesser lord Nicholas Utoličić gave as a present his hereditary estate, the village of Ljubočeve, to the monastery (И јеце приложи любовни властелиничъ царьства ми Никола Оугличникъ село свое вацинъно Любочево). “Nicholas and his mother shall hold the village of Ljubočeve as long as they live, and after their death the donee (monastery of Saint Archangels) shall acquire the ownership rights over that gift” (а по Николинѣ животѣ и јегове матерѣ да не влаги никто онѣмъзи селомъ ни црквию тъкмо црквь царьства ми Архаггель).⁵⁹ On 7 April 1453, at a market-place in Kosovo, a certain Novak and his spouse Yela gave half of their house to the monastery of Saint Paul, but the monastery would acquire the ownership rights over the house after the donor's death (ИА Новакъ с моемъ подъѣжичемъ Јеломъ, нашимъ волимъ и нашимъ хотениемъ, изъволисмо и приложисмо на нашемъ животъ Светомъ Павла половина кѹке ... да вѣладамъ та Новакъ до мoga живота свимъ кѹкимъ, а по моемъ съмрти да є Светомъ Павлъ половина кѹкъ ...).⁶⁰

54 *Procheiron* XII, 3, Zepos, vol. II, p. 150.

55 *Procheiron* XI, 4, Zepos, vol. II, pp. 150–151. Cf. *Ecloga* IV, 3, 1: διὰ προσδοκίαν θανάτου δορεά, and IV, 3, 2: δωρούμενος διατάξηται, ed. Burgmann, p. 186.

56 Ed. Dučić, p. 297; ed. Petrović, pp. 314a–314b.

57 See Chapter 13, section 2, on contracts.

58 See T. Matović, “ΜΕΤΑ ΘΑΝΑΤΟΝ ΔΩΡΟΝ и svetogorskim aktima” [“ΜΕΤΑ ΘΑΝΑΤΟΝ ΔΩΡΟΝ in Holy Mountain Acts”], in ΠΕΡΙΒΟΛΟΣ, *Mélanges offerts à Mirjana Živojinović*, vol. II (Belgrade 2015), pp. 427–442.

59 Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 98.

60 Bubalo, *Srpski nomici*, p. 261. See S. Šarkić, “Serbian Mediaeval Law on Wills and Succession”, *Pravni zapisi* 11.1 (2020), pp. 121–140.

Family Law

Family law is a branch of law concerned with such subjects as marriage, adoption, divorce, separation, paternity, custody, support and child care.

Although the Serbs were converted to Christianity between 867 and 874, family relations were based on customary law. It seems that until the beginning of the 13th century, entering into marriage was very simple and the majority of population lived in so-called “wild marriages”—irregular unions in which promises were exchanged between the parties without an official ecclesiastical representative present. Such unions were customary among serfs, villagers, slaves and Vlachs, who simply paired by order of their lord or master. No particular form was needed for a declaration of divorce (*repudium*). Saint Sabba and his brother Stefan the First Crowned tried very hard to introduce ecclesiastical rules in the matter of family law. However, a gap between old ideas, inherited from the pagan epoch, and complicated canon law provisions of the Greek Orthodox Church, exposed in translations of Byzantine legal miscellanies (the *Procheiron* and *Syntagma* of Matheas Blastares), was very wide.¹ What was in practical use?

1 Marriage (γάμος, *nuptiae*, *matrimonium*, *ερακτός*)

1.1 The Concept of Marriage

A definition of marriage was given by the famous Roman lawyer Modestinus in the first book of his *Regulae* (*libro primo regularum*), and *Digest* editors placed it at the beginning of Chapter II of Book XXIII under the title *De ritu nuptiarum*. The definition is as follows: *Nuptiae sunt coniunctio maris et feminae et consoritum omnis vitae, divini et humani iuris communicatio* (“Marriage is a conjunction of a man and woman, a lifelong union, an institution of divine and human law”).² In Justinian’s *Institutions* there is a similar definition: *Nuptiae autem*

¹ See S. Bojanin, “Bračne odredbe Žičke povelje izmedu crkvenog i narodnog koncepta braka” [“The Marriage Provisions in the Charter of the Žiča Monastery between the Church and the Popular Concept of Marriage”], in *Vizantijski svet na Balkanu* [Byzantine World in the Balkans], Institute for Byzantine Studies, Serbian Academy of Sciences and Arts, Studies, no. 42.2 (Belgrade 2012), vol. II, pp. 425–442.

² D. XXIII, 2, 1.

sive matrimonium est viri et mulieris coniunctio, individuam consuetudinem vitae continens (“Marriage is a conjunction of a husband and wife, created to last for life”).³ The definition of Ulpianus found in Book L of the *Digest*, Chapter vii entitled *De diversis regulis iuris antiqui*, also demonstrates the Roman idea of marriage: *Nuptias non concubitus, sed consensus facit*, i.e. “the essence of marriage is not sexual relation but consent [to live in matrimony]”.⁴

The *Procheiron* accepted Modestinus’ definition and translated it into Greek: Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ συγκλήρωσις πάσης ζωῆς, θείου καὶ ἀνθρωπίνου δικαίου κοινωνία.⁵ As we can see, the text is literally translated and fully corresponds to the Roman concept, that marriage is a social fact, not a civil law relation. It is interesting that neither the *Procheiron* nor *Ecloga*, which preceded it, insist on the formal proceedings of a wedding as an exclusive requirement for marriage, which could be considered as usual in Orthodox Byzantium.⁶ But later on, laws that were passed during the rule of the Macedonian dynasty introduced innovations and inserted what was “omitted” by the editors of the *Procheiron*. The editors of the *Epanagoge/Eisagoge* amended Modestinus’ definition of marriage by omitting the wording θείου καὶ ἀνθρωπίνου δικαίου κοινωνία (“institute of divine and human law”), and by inserting the words εἴτε δι’ εὐλογίας εἴτε διὰ στεφανώματος ἢ διὰ συμβολαίου, meaning that the marriage is to be effected either by a wedding ceremony or a blessing or a literal contract.⁷ So, wedding ceremony, blessing and secular contract were considered equal. Leo VI proceeded one step further, and his *Novella* 89 (issued 893) prescribed Church benediction (ἐὐλογία) as an obligatory form of entering into such a contract.⁸

It seems that, notwithstanding this provision, numerous weddings were not performed following religious rites. Due to that fact Emperor Alexios I Comnenos issued in 1095 a *Novel* 35, which prescribed Church marriage as mandatory even for slaves.⁹ Finally, in 1306 Emperor Andronicos II Palaiologos and Patriarch Athanasios issued a *Novel* 26, which required that weddings should be performed in the presence of an authorised clergyman.¹⁰

3 *Iust. Inst.* 1, 1. In the text we find *nuptiae autem sive matrimonium*. Editors used two terms for marriage (*nuptiae* or *matrimonium*).

4 D. L. 17, 30.

5 *Procheiron* IV, 1, Zepos, vol. II, p. 124.

6 See *Ecloga* II, 1, ed. Burgmann, p. 170.

7 *Epanagoge* XVI, 1, Zepos, vol. II, p. 274.

8 Ed. Noaille and Dain, pp. 295–297.

9 Zepos, vol. I, pp. 341–346. According to Roman law marriages between slaves (*contubernium*) possessed no legal validity.

10 Zepos, vol. I, pp. 533–536.

The editors of Serbian legal miscellanies accepted Byzantine translations of Roman definitions of marriage. The *Nomokanon* of Saint Sabba incorporated Modestinus' definition of marriage, which had been taken from the *Procheiron* (like the other provisions about marriage). Here is the Serbian original: Брак је је моногам и жени се уетане, и се вије ве већи жиљни, божјествене же и улобвљујесије праведи овешене.¹¹ Matheas Blastares, like the translators of his *Syntagma* into Serbian, took the modified Modestinus' definition of marriage from the *Epanagoge/Eisagoge*, which is (Г-3): Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ συγχλήρωσις πάσης ζωῆς, θείου τε καὶ ἀνθρωπίνου δικαίου κοινωνία, εἴτε δι' εὐλογίας, εἴτε διὰ στεφανώματος, ἢ διὰ συμβολαίου; Брак је моногам и жени се вијујуплије и се наслеђије ве већи жиљни, божјествене же и улобвљујесије правни приовешене, любо благословене, любо венчане, любо се записане.¹² The definition from the 9th century, which equalized a laic contract with blessing and marriage, was considered obsolete by the 14th century. Neither Matheas Blastares nor his Serbian translators incorporated into the *Syntagma* Novels of Byzantine Emperors that required religious rites for marriage. The editors of the Law Code of Stefan Dušan corrected Blastares' "mistake", by putting articles 2 and 3 of the Code fully in conformity with the *Novellae* of Byzantine Emperors and with religious practice. We are going to quote them in full:

Article 2, "Of marriage" (О женитвѣ):

Lords and other people may not marry without the blessing of their own archpriest or of such cleric¹³ as the archpriest shall appoint.

Властел и прочии людии, да се не жене, не благословивши се оу своега архієрея, али оу течзии да се благослове, кои са избрали доуховники архієреи.

Article 3, "Of weddings" (О свадбѣ):

No wedding may take place without the crowning, and if it be done without the blessing and permission of the Church, then let it be dissolved.

¹¹ Ed. Dučić, p. 258; ed. Petrović, p. 270b.

¹² Ed. Ralles and Potles, pp. 153–154; ed. Novaković, p. 160. Although Matheas Blastares took the definition of Modestinus from *Epanagoge/Eisagoge*, he did not omit the words "institute of divine and human laws", which was done by the editors of the *Epanagoge/Eisagoge*.

¹³ *Duhovnik*, lit. "spiritual person".

И ни једна свад'ба да се не оучини без вѣн'чанїа; ако ли се оучини безъ благословенїа, и оупрошениа цркве, таковы да се разлоуче).¹⁴

Article 3 clearly marks a difference between *svadba* = wedding and *venčanje* = crowning. *Svadba* is entering into a marriage according to the old customs from the pagan epoch with beautiful and well-formed ritual, surviving to the present day especially with Russians and South Slavs. *Venčanje* is a religious rite (*consecratio*) with a central ceremony consisting of putting crowns on the heads of the bride and groom (Greek στεφάνωμα, from στέφανος = crown, Serbian *venac*, *venaču*).

By those articles of Dušan's Law Code, the old Roman concept of marriage as of a laic contract finally disappeared, and the Christian concept of marriage as a holy sacrament or mystery (μυστήριον) prevailed and was fully accepted.¹⁵

1.2 *Lack of Disqualifications*

In Old Serbian, entering into marriage was designated by two terms: to take a wife is *da se ženi* and to take a husband is *da se muži* (Dušan's Law Code, article 154: *да се мoughи и женїи*; King Stefan Dečanski's charter confirming the gift of *kaznac* [tax collector] Demetrios to the monastery of Saint Nicholas on the island of Vranjina: *И ако се јегова жена омоужкии ...; Ако ли се не омоужкии*).¹⁶ The first expression survived into modern Serbian, while the second is no longer in use.¹⁷

Husband and wife had to have reached the age of puberty - 14 in the case of the male, 12 in the case of female. The *Ecloga* set a limit of 15 years in the case of a male, and 13 in the case of females.¹⁸

Chapter B-8 of Matheas Blastares' *Syntagma*, under the title "On matrimonial degrees" (Περὶ τῶν τοῦ γάμου βαθμῶν, Ο степенехъ брака) speaks minutely

¹⁴ Burr, "The Code of Stephan Dušan", pp. 198–199; Novaković, *Zakonik*, pp. 7–8; *Zakonik cara Stefana Dušana*, vol. III, p. 98.

¹⁵ See S. Šarkić, "The Concept of Marriage in Roman, Byzantine and Serbian Mediaeval Law", *ZRVI* 41 (2004), pp. 99–103.

¹⁶ Novaković, *Zakonik*, pp. 120–121; *Zakonik cara Stefana Dušana*, vol. III, p. 144; Novaković, *Zakonski spomenici*, p. 581, paras III, IV.

¹⁷ In Serbian, as in Russian, different words are used for marrying according to the sex of the person. The Serbian word for a man to marry is *oženiti se*, a reflexive verb from the word *žena* = woman. The word for a woman, in the modern language, is *udati se*, literally to give oneself up, but in the Macedonian language the old verb is still used, *mužiti se*, from the word *muž* = a husband. Cf. Burr, "The Code of Stephan Dušan", p. 529.

¹⁸ *Ecloga* II, 1, ed. Burgmann, p. 170.

of all the prohibited degrees of relationship.¹⁹ The essential provisions are as follows.

- a) Blood relationship (Περὶ τῆς ἐξ αἵματος συγγενείας, Ο иже отъ кръве ръздѣлиенїа)—marriage between parties sharing a blood relationship was invalid. At no time might those with a lineal relationship marry. The law concerning collaterals prohibited marriage to those up to the eighth degree (Τοῖς δὲ ἐξ πλαγίου ὁ ὄγδοος ἐφίησι τὸν γάμον βαθμός τοῦ ζ. τοῦτον παντάπασιν εἰργοντος, Отъ стране же соуштимъ осмы праштають бракъ степень: сед' момоу се отноудь въз'ераніяюштоу).²⁰
- b) Relationship by marriage or affinity (Περὶ τῶν ἐξ ἀγχιστείας, О иже отъ сватств�)—step-parents and step-children, parents-in-law and children-in-law were disqualified from marriage. This law was later extended to include the former spouse of a brother or sister.²¹

Among relationships by marriage Serbian charters mention only one impediment: marriage with a sister-in-law.²² Such a provision is contained in the Žiča charter: "If someone took sister-in-law against law,²³ if he be a noble or a soldier, let him give to his master a fine of two oxen; if he be from poor people, bishop will take a half, then let it be dissolved" (Аще кто сватвицъ прѣз законъ Ѹзме, аще вѣдеть шть властель или шть воиникъ, да Ѹзимаетъ вѣдѣнъ господствѣнъ по .В. воли; аще ли шть Ѹбогихъ, то да Ѹзима светитель половинъ, а такови да се распѣцають Ѹ распѣстѣхъ или Ѹ сватвиахъ).²⁴ It seems that marriage with a *svastika* (sister-in-law) was allowed by Serbian customary law and that it was widespread. That was the reason why a legislator insisted on that impediment.²⁵

- c) Spiritual relationship (*cognatio spiritualis*, πνευμαтиκὴ συγγένεια, Дѹжњовноје съродство)—already Justinian prohibited the marriage of god-parents and god-children.²⁶
- d) Existing marriage—an existing lawful marriage prevented either partner entering another marriage relationship. Bigamy was punished.

¹⁹ Ed. Ralles and Potles, pp. 125–141; ed. Novaković, pp. 130–146.

²⁰ Ed. Ralles and Potles, p. 128; ed. Novaković, p. 132.

²¹ Ed. Ralles and Potles, pp. 129–130; ed. Novaković, pp. 134–135.

²² The Serbian word is *svastika* = wife's sister.

²³ The word *zakon* = law, used in the text designates custom (*consuetudo*), not legal rule (*lex*).

²⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

²⁵ We have already mentioned that the Saint Stephen and Dečani charters forbid marriages between villagers and Vlachs (see Chapter 5, section 2.2). However, this kind of impediment has more social and economic explanations.

²⁶ Ed. Ralles and Potles, pp. 138–139; ed. Novaković, pp. 143–144.

- e) Guardians and wards (Περὶ ἐπιτρόπου καὶ ἀφηλίκων, Ο πρισταβ'νιцѣ)—guardians (*tutor*, ἐπίτροπος, *пристав'никъ*) were not allowed to marry their wards (*pupillus*, ὁρφανός, *сиротю*). Tutelage came to an end when the *pupillus* reached the age of 30 and then a guardian could marry his female ward. However, the mother of the female ward (ἐπιτροπευθείσης, *пристав-лиеніемъ*) could give her daughter in marriage even before that term.²⁷
- f) Widows—where a widow married within 12 months of the death of her husband, the marriage was not invalidated, but it brought *infamia* (ἀτι-μοῦται, *обесчестеватъ се*) upon her. She could inherit nothing from the matrimonial property of her ex-husband, and she could give only the third part of her estate to her second husband, in the case that she had no child. If a widow was delivered of a child within 11 months of the death of her husband, it would be considered as a debauchery (*πορνεία ἐστὶ τὸ γεγονός, блудъ есть бышъе*), and she would get nothing from inheritance.²⁸
- g) Marriages with Heretics—these were strictly forbidden, and Matheas Blastares speaks on this topic in Chapter Γ-12 under the title “On why not to enter into marriage with heretics” (“Οτι οὐ δεῖ γάμους συναλλάττειν μετὰ αἱρετικῶν, Ήπο νε подобаетъ брака замѣновати съ еретици”).²⁹ The notion of heretics was broad, and under that term were considered Jews, Hellenes (Greeks, i.e. pagans, heathens) and Latins (Roman-Catholics) as well: “We call heretics those persons, who accept the secret [of Baptism] with some mistakes, by which they differ from Orthodox people; Jews are Christ’s murderers, and Hellenes are obviously infidels and infected by idol-worshipping” (αἱρετικοὺς μὲν τοὺς τὸ καθ’ ἡμᾶς δεχομένους κυστή-ριον λέγων, ἐν τισὶ δὲ σφαλλομένους, παρὸ καὶ διαφερομένους τοῖς ὄρθοδόξοις· Ιουδαίους δὲ, τοὺς Χριστοκτόνους, καὶ ἔλληνας, τοὺς περιφανῶς ἀπίστους καὶ εἰδωλομανίαν νοσοῦντας, ερετικы оубо иже въ нась приемлюштихъ таинь-ство глаголи, въ нѣкыихъ же погрѣшаюштихъ по иемуже и разнѣствуютъ съ православными; йоудеи же Христоу оубиинце и юл'ине іав'е небѣрныи и идолобесиимъ недоугулюштихъ). “If a heretic or infidel promises that he shall become an Orthodox, marriage shall be postponed until the transformation begins ... Latins have to do the same thing if they wish to marry an Orthodox woman” (Εἰ δ’ ἵσως ὁ αἱρετικός, ἢ ὁ ἀπίστος συνθέσθαι τῇ ὄρθο-δόξῳ ἐπαγγέλλεται πίστει, τὸ μὲν συνάλλαγμα προβανέτω ... Ταῦτα καὶ τῶν

²⁷ Ed. Ralles and Potles, pp. 139–140; ed. Novaković, pp. 144–146. Cf. Chapter 1, section 1.

²⁸ Ed. Ralles and Potles, p. 141; ed. Novaković, p. 146. Cf. *Basilika* xxviii, 14, 1.

²⁹ Ed. Ralles and Potles, pp. 173–175; ed. Novaković, pp. 181–183.

Λατίνων ποιεῖν εἰσπράττονται, οἱ ὁρθοδόξους ἀγαγέσθαι γυναικας αἰρούμενοι;
 Аште ли же оубо еретикъ или нееврънъ съприложити се православ'нъи ове-
 штавають се в'брѣ, иеже оубо замѣниенїе да творить се ... Сїа и соушти отъ
 латинъ творити истездаемыи соуть, иже православ'нъи поети жены воле-
 штс).³⁰

Article 9 of Dušan's Law Code says: "And if anywhere a half-believer³¹ take a Christian³² woman to wife, let him be baptized into Christianity, and if he will not be baptized, let his wife and children be taken from him and let a part of the house be allotted to them, but he shall be driven forth" (И ако се наиде подъвѣр'цъ, оузыъмъ христіаницъ, ако ѳзлюбси да се кръсти оу христіан'ство. ако ли се не кръсти, да мѣ се оузмѣ жена и дѣца и да имъ дада дѣль отъ коуксie, а ини да се иждене).³³

The intention of article 9 was to prevent marriages between Greek Orthodox and Roman Catholics, due to the very complicated political relations in the Balkans in the first part of the 14th century. We shall analyse in detail this article in Part 5, dedicated to criminal law.

2 Matrimonial Property

2.1 Gift

Roman law knew gift before marriage (*donatio ante nuptias*, προγαμιαία δωρεά, прѣждебрауне даръ) and gift on account of marriage (*donatio propter nuptias*, ύπόβολον, подлогъ). In Roman law *donatio ante nuptias* took the form of a settlement on the wife made by the husband and intended as his share of the expenses of the marriage. So that the prohibition of gifts between spouses might not take effect, the *donatio* was made before the marriage. On the husband's death, or in the case of divorce without fault on the wife's part, the *donatio* passed to her. If there were children, they received ownership of the *donatio* and a wife received a usufruct. Under Justinian a settlement might be made before or after the marriage (*donatio propter nuptias*). There was rarely a transfer of property; the husband merely contracted to make a gift.³⁴

³⁰ Ed. Ralles and Potles, p. 173; ed. Novaković, p. 181.

³¹ The "half-believer" is a "Latin", one who is not completely Christian nor yet pagan. See D. Bubalo, "Poluverci", in *LSSV*, p. 549.

³² The "Christian" in Dušan's Law Code always designates an Orthodox.

³³ Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 13; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

³⁴ See Curzon, *Roman Law*, p. 45.

Among Byzantine legal miscellanies, the *Procheiron* contains Chapter vi under the title “On gifts before the marriage” (Περὶ προγαμιαίας δωρεᾶς, Ο πρέσβετος δεερανημές δαρψ),³⁵ which repeats the provisions from Justinian’s legislation. Emperor Leo VI in his *Novella* 20 (between 886 and 910) prescribed that neither husband nor wife could acquire nothing else but *hypobolon* (*donatio propter nuptias*) in the case of death of one or another (Περὶ τοῦ μὴ λαμβάνειν τὸν ἄνδρα ὥσπερ τὴν γυναῖκα εἰς τὰ παρὰ τοῦ ὑποβόλου ἐκ προτελευτῆς θατέρου μέρους).³⁶

Matheas Blastares introduced in his *Syntagma* just a short fragment from Emperor Leo VI’s *Novella* 20, saying that dowry has to be of greater value than the gift on account of marriage (*hypobolon*). If the husband dies without child, a wife will acquire dowry and *hypobolon*. If the wife dies, their heirs will get dowry and the husband his *hypobolon* (Ἡ τοῦ σοφοῦ Λέοντος Νεαρὰ, πλείονα δεῖ εἶναι, φησὶ, τὴν προῖκα, τοῦ ὑποβόλου τοῦ δὲ ἀνδρὸς ἀτέκνου τελευτήσαντος, ἃν μὴ παρῇ σύμφωνον, ἀνακοιζέται ἡ γυνὴ τὴν τε προῖκα καὶ τὸ ὑπόβολον, καὶ πλέον οὐδέν· εἰ δὲ τὴν γυναῖκα ὁ θάνατος διασπάσει, τῆς μὲν οἱ κληρονόμοι τὴν προῖκα λαμβανέτωσαν· ὁ δὲ ἀνὴρ, τοῦ ἰδίου μὴ ἀποστερείσθω ὑποβόλου, Πρέμογδραγο λύβα Νοβαία μνοκαί ποδοβαλεῖτε βγατι ρεчє прикин отъ подлога: монжеви же бесседноу оумършоу, аште не боудеть съгладїа, въсприемлеть жена прикию и подлогъ и множе ництоже; аште ли женог съмрть отгрьгнеть, оное оубо наслѣдници прикию да прикемлють. монжъ же своєго подлога да не лишиг се).³⁷

Serbian legal sources do not contain rules on gifts before marriage and gifts on account of marriage.

2.2 Dowry (dos, προῖκα, προϊξ, вѣно, прикиа, прикина, тѣстнина)

Although Roman lawyers in their books did not give a single definition of dowry, they considered dowry (*dos*) as the property which on marriage, by a special agreement (*pactum*), is transferred by the wife herself or by another to the husband with a view of diminishing the burden which the marriage will entail upon him. It was of three kinds. *Profecticia dos* is that which is derived from the property of the wife’s *paterfamilias*, her father or paternal grandfather. *Adventicia* is termed that *dos* which is not *profecticia* in respect to its source, whether it is given by the wife from her own estate or by the wife’s mother or a third person. It is termed *recepticia dos* when accompanied by a stipulation for its reclamation by the constitutor on the termination of the marriage.³⁸

³⁵ Zepos, vol. II, p. 129; ed. Dučić, p. 266; ed. Petrović, p. 273a.

³⁶ Ed. Noaille and Dain, pp. 77–83.

³⁷ Ed. Ralles and Potles, p. 483; ed. Novaković, p. 511.

³⁸ *Ulpiani regularum liber singularis*, VI, 3–5, ed. A. Romac (Zagreb 1987) (Latina et Graeca Liber XI), pp. 32–34: *Dos aut profecticia dicitur, id est quam pater mulieris dedit; aut adventici-*

The property over dowry was a very complicated question, and Roman lawyers discussed this legal institution at large. In a fragment from the *Digest* we can find opinion of the famous Roman *iurisconsultus* Paulus, who considers that *dos*, throughout the continuance of a marriage, is the property of the husband (*Idem [Paulus] respondit constante matrimonio dotem in bonis mariti esse*).³⁹ The frequency of divorces in Roman society, however, imposed the issue as to whether the dowry should be given back to a wife upon termination of the marriage. That was the reason why Roman lawyers gradually developed the idea that *dos* was still the property of a wife, as was expressed by Tryphoninus as follows: “Though the dowry is in husband’s estate, it still belongs to the wife” (*quamvis in bonis mariti dos sit, mulieris tamen est*).⁴⁰

In later Roman history, *dos* got a great importance in property-rights relations between consorts, so that Roman lawyers discussed it at large, creating a great number of rules, which can be summarized as follows. After the death of the husband, the dowry belongs to the wife. In case of a divorce, a husband has to give back the dowry to his wife, but he can retain some parts of a dowry, for example for the interest of his children (*propter liberos*). If the marriage has been dissolved due to the proved fault of the wife, the husband can retain one to (max.) six parts of the dowry (depending on the number of children they have), but not exceeding half the dowry. From moral laws (*propter mores*), for example if a wife commits adultery, a husband can retain a sixth of the dowry. If the wife dies before her husband, a *dos profectitia* has to be returned to the wife’s father, but the husband can keep one-fifth of the dowry for each child.⁴¹

The legislation of Justinian insists that the dowry (*dos*) is the wife’s property, and those provisions were taken over, first in the *Procheiron* and, after its translation into Old Serbian, in the *Nomokanon* of Saint Sabba. The editors of the *Procheiron* gathered the provisions on dowry in Chapter VIII entitled “On the law of dowry” (Περὶ δικαίου προικός) and in Chapter IX entitled “On demand of dowry and its burdens” (Περὶ ἐκδικήσεως προικός καὶ τῶν βαρών αὐτῆς).⁴²

cia, id est ea, quae a quovis alio data est ... Adventicia autem dos semper penes maritum rimanet, praeterquam si is, qui dedit, ut sibi redderetur, stipulatus fuit; quae dos specialiter recepticia dicitur.

³⁹ D. L, 1, 21, 4.

⁴⁰ D. XXIII, 3, 75.

⁴¹ The majority of rules concerning dowry were presented by the lawyers of Justinian in three titles of the *Digests*’ Book XXIII: third title *De iure dotium* (“On the law of dowry”), which contains 85 fragments from the works of Roman lawyers; fourth title *De pactis dot-alibus* (“On dotal pacts”), containing 32 fragments; and fifth title *Defundo dotali* (“On dotal land”), containing 18 fragments.

⁴² Ed. Zepos, vol. II, pp. 139–143.

The Old Serbian translation of Chapter VIII is “On effecting of the dowry” (О исправљенем вѣна) and of Chapter IX “On demand of dowry and its burdens” (О ѿтъмыщенїи вѣна и тежести его).⁴³

Matheas Blastares placed the rules on dowry in two chapters: Chapter Δ (Д) - 2 entitled “On lenders and loans and pledges” (Περὶ δανειστῶν, καὶ δανείου, καὶ ἐνεχύρων, Ο δαιεμνηцѣхъ и зданимъ и залогъхъ) and Chapter Π-20 entitled “On dotal property” (Περὶ προικῶν πραγμάτων, Ο прикиниихъ иманіиихъ).⁴⁴ He retained rules from the *Procheiron*, i.e. from the legislation of Justinian, and these are the following provisions: the husband can use the dowry, but he has no right to sell it. The wife is not allowed to give her dowry in a loan for the debts entered by her husband.⁴⁵ If a husband becomes insolvent, because of his debts, a wife has the right to reclaim the dowry, and she has even a priority regarding a state (“imperial”) demand (τοῦ δημοσίου χρέους, отъ народнаго дълга, рече царскаго).⁴⁶ After a wife’s death, the dowry belongs to the children. The husband could not inherit the dowry. If the wife dies having no children, the dowry has to be returned to her family.⁴⁷ Any agreement between consorts establishing the right of a husband to inherit the dowry is null and void. Such agreement, however, is allowed if it is entered into between the father of the bride and the bridegroom, because the father of the bride has the disposal right on the dowry.⁴⁸ A husband has the right to demand the promised dowry with interest in judicial trial, if the dowry has not been disbursed to him on time.⁴⁹

A short survey of Graeco-Roman law provisions on dowry shows that this private-law institution penetrated mediaeval Serbia by translation of Byzantine legal miscellanies. But to what extent and over what period were all those

43 Ed. Dučić, pp. 279–286; ed. Petrović, pp. 278b and 279a. It is interesting that the Serbian translators of the *Procheiron*, for the Greek word προίχα, προῖξ = dowry, used the Old Slavonic term *veno* (гено), while in the legal sources from the 14th century we find the expression *prikia*. See S. Šarkić, “Jedan pravnoistorijski prilog o Zakonopravilu Svetoga Save” [“A Contribution to the Study of the *Nomokanon* of Saint Sabba from the Perspective of Legal History”], in *Nasleđe i stvaranje, Sveti Ćirilo—Sveti Sava, 869–1219–2019 (Sanctorum Cyrilli et Sabbæ patrimonium—posterioras quae eo structa sunt, DCCCLXIX–MCCXIX–MMXIX)* (Belgrade 2019), pp. 461–470. Both terms are obsolete today. In modern Serbian the word *miraz* is used for dowry, which originates from Arabic, coming into Serbia during the Turkish occupation (Arabic *mīrāt*, Turkish *miras*). See Škaljić, *Turcizmi u srpskohrvatskom-hrvatskosrpskom jeziku*, p. 464.

44 Ed. Ralles and Potles, pp. 204 and 440; ed. Novaković, pp. 214 and 466.

45 Ed. Ralles and Potles, p. 204; ed. Novaković, p. 214.

46 Ed. Ralles and Potles, p. 204; ed. Novaković, p. 214.

47 Ed. Ralles and Potles, p. 441; ed. Novaković, p. 466.

48 Ed. Ralles and Potles, p. 441; ed. Novaković, p. 466.

49 Ed. Ralles and Potles, p. 441; ed. Novaković, p. 466.

rules actually applied? Were they in accordance with Slavonic customary law on family? The answers are unknown due to an absence of any surviving legal decisions, the only material which could resolve these questions.⁵⁰

However, dowry was mentioned in several fragments of Serbian legal sources from the 14th century, what undoubtedly means that this private-law institution, under the influence of Byzantine law, was very well known in Serbian mediaeval law.⁵¹ For example, in Saint George's charter we read: "And Dragoslav *camerarius* gave [to the monastery] from the estate acquired from his father-in-law, the vineyard Mavrovo in Butela" (И Драгославъ каџињаць даје ѿ тъст'нице си виноградище Маврово ѿ Бутели).⁵² The editors of the charter emphasize that *camerarius* Dragoslav gave the vineyard to the monastery as a donation from the property that he acquired from his father-in-law (*tastnina*, from Serbian term *tast* = father-in-law), what was probably a dowry. The same charter mentions *tastna prikija* (тъстна прикија), i.e. the dowry (*prikija*) obtained from the father-in-law (*tastna*); the dowry was acquired by a certain Manota, who was the son-in-law of a certain Dragota (Манота ѣеть Драготинъ).⁵³

⁵⁰ According to Karl Kadlech, a Czech scholar who studied primitive Slavonic customary law (*Prvobitno slovensko pravo pre x veka, translated and supplemented by Teodor Tarantovski* [Belgrade 1924], p. 82), those rules were in discordance with the Old Slavonic custom, which provides that the bride gets no dowry, only some garments and trinkets.

⁵¹ The influence could come from the maritime towns on the Adriatic coast, which in the 14th century were part of the Serbian mediaeval State (Kotor, Budva, Bar, Ulcinj, today all of them in Montenegro), and from Ragusa (Dubrovnik) as well. For example, chapter 149 of the Statute of the City of Kotor from 1316, was entitled *De dote et parchivio (parchivium*, from Greek word προῖξ = prikija, dowry), which expresses ideas from the legislation of Justinian, i.e. that dowry is the wife's property (*Statut grada Kotora*, vol. I, p. 89; see also Sindik, *Komunalno uredenje Kotora*, p. 130). The principle that the dowry is the wife's property was more explicitly expressed in the Statute of Dubrovnik from 1272: *Intentionis enim nostrae est, ut semper et in omni casu dos sive perchivium mulieris sit salvum* (Liber IV, Cap. I, *Statut grada Dubrovnika*, p. 240).

⁵² Mošin, Ćirković, and Sindik, *Zbornik*, p. 319.

⁵³ Ibid., p. 324. Abovementioned examples show us that the general principle of Byzantine law, that even immovable things could be given as dowry (which was not explicitly mentioned in the *Syntagma* of Matheas Blastares), was accepted in the region of Skoplje (today in North Macedonia). Cf. Solovjev, *Zakonodavstvo Stefana Dušana*, p. 131. To confirm that fact Solovjev quotes a fragment from King Milutin's charter to the *pyrgos* of Hilandar, saying that the Serbian King has got the whole region of Skoplje as a dowry of Princess Simonis, from her father Byzantine Emperor Andronikos II Palaiologos (и по томъ въихъ ѣеть благовѣрномѹ и самодѣжалномѹ царю курѣи Адроникѹ Палеологѹ, и да ми оно-ѹзи землю оу прикию; Novaković, *Zakonski spomenici*, p. 477, para. 11). In my opinion this is not about the dowry as a private-law institution, but rather about diplomatic policy; in order to save their reputation, the Byzantines gave to the Serbian King, under the cover of dowry, territories which had already been conquered by Milutin.

Articles 31 and 32 of so-called “*Justinian's Law*” mention dowry using the Greek word *prikija*. Article 31: “If someone takes a wife according to the law, with or without dowry, and a husband dies and a woman remains without a child, to her property shall be added the fourth part of the husband's dowry” (Ацие икто женоу оузначетъ по закону или с прикишом или без прикие и оумрѣть моуъ, а жена юстанеть бесчедна, да се придаст иен къ всемоу иенинѣ и ѿт мѣжевије прикие четврти дѣль).⁵⁴ Article 32 orders: “If a husband agrees with his consort to inherit her after her death, as regards that a dowry remains his property, any other consent is not necessary” (Ацие ли съгласить мѣжъ съ женовою да оумирающи инон наследитъ иену, рекше да юстанеть прикиа оу иега. Съгласие непотрѣбно юест).⁵⁵

The Law Code of Stefan Dušan mentions dowry (*prikija*) only in article 44, speaking on *otroci* (slaves). However, that provision has already been explained above (see Chapter 5, section 3.2).

Serbian legal sources very often use the expression *prikisati* (прикисати) or *u prikiju dati* (и прикию дати), both meaning “to give as a dowry”, generally when they speak of the different ways of alienation of a thing (transfer of the property). We have already mentioned these documents: the so-called “*Tapija* from Prizren”;⁵⁶ Tsar Uroš's charter granting Mljet Island to Bivoličić and Bučić, noblemen from Kotor;⁵⁷ and the charter of Despot Durad Branković in favour of headman Radic.⁵⁸

It is interesting that article 40 of Dušan's Law Code, proclaiming the right of noblemen to dispose freely of their inheritances, does not mention giving a dowry (*prikisati*) as a way of alienation of a thing (transfer of property): “And those charters and decrees which my majesty hath granted and shall grant, and those inheritances, are confirmed, as also those of the first Orthodox Tsars: and they may be disposed of freely, submitted to the Church, given for the soul or sold to another” (И въси христоволїе, и простаг'ме, цио юесть комѣ оучинило царство ми, и цио ке комѣ оучинити и тезији баџине да сѹ тврдѣ, каконо и првых пра-вовѣрных царь; да сѹ вол'ны ными и под, црквовъ дати, или за доушѣ ѡдати, или иномѣ продати комѣ любо).⁵⁹ However, it is hard to believe that noblemen

⁵⁴ Edited by Marković, pp. 60–61.

⁵⁵ Ibid., p. 61. However, the wording of article 32 is not clear enough. It seems that a clerk confused dowry with hereditary rights.

⁵⁶ Ed. Bubalo, *Srpski nomici*, pp. 250–252.

⁵⁷ Ed. R. Mihaljčić, *SSA* 3 (2004), pp. 71–87.

⁵⁸ Ed. Novaković, *Zakonski spomenici*, p. 334.

⁵⁹ Burr, “The Code of Stephan Dušan”, p. 207; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

could not dispose with that right, because contemporary charters mention this way of alienation.⁶⁰ Besides, article 174 says: "Workers on the land who have their own inherited property, land, vineyards or purchased estate, are free to dispose of their own lands and vineyards, to give them as dowries, to give them to the Church, or to sell them" (Людје земљане кои имају својо баџине, земљу и винограде, и коуплиенице да се вол'ни ут својих винограда и ут земље оу присју утдати, или цркви подложити, или продати).⁶¹ So, as commoners (*sebri*) had the right to alienate their hereditary estates by giving them as a dowry, it is probable that noblemen had the same right as well. As Dušan's Law Code does not survive in its original text, the non-appearance of the abovementioned provision could be due to the negligence of the copyist. Otherwise we probably have a defective transcript of the Law Code.⁶²

3 Dissolution of Marriage

Marriage could be dissolved by death, prolonged absence, enslavement and divorce.

Marriage was dissolved by death. In some cases a widow was not free to remarry immediately.

Prolonged absence could have the same effect as death on a marriage. The absence of news from a spouse for a considerable period, and circumstances from which death might be presumed, could end a marriage.

The enslavement of a spouse terminated the marriage.

Divorce (*divortium, repudium, difarreatio, λύσις, διαζύγιον, разрѣшеніе*) is the legal separation of man and wife, effected by the judgment or decree of a court, and either totally dissolving the marriage relation or suspending its effects so far as concerns the cohabitation of the parties.

The first Serbian legal document that treats of divorce was the charter presented by King Stefan the First Crowned to his foundation, the monastery of Žiča. The charter exposes a concept that divorce is impossible, saying: "And the Testimony, followed by the Church constitution and tradition, forbids a separation of man from wife, and wife from man" (И по томоу божјествни съ законъ најузвѣше по црквномомѹ јеставѣ и прѣданї, и господско ћагрење

⁶⁰ Cf. Solovjev, *Zakonodavstvo Stefana Dušana*, p. 132.

⁶¹ Burr, "The Code of Stephan Dušan", p. 533; Novaković, *Zakonik*, p. 136; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

⁶² Solovjev, *Zakonodavstvo Stefana Dušana*, p. 132. See also S. Šarkić, "Provisions of Roman Law on Dowry in Serbian Mediaeval Law".

быть: не разлучати се мужу от жене и жену от мужа).⁶³ Marriage could be divorced only by judicial process, and the only ground that was mentioned was adultery (никтоже да не штавајујет божествнаго сего Закона, развеј словесе прелюбодѣниаго, и тои истинно да испитајет се съ расаждением).⁶⁴ Everyone who turned a deaf ear to this order, which our charter calls a “frightful command” (сио страшною заповѣдь), would be fined in cattle, according to his legal status.⁶⁵ The charter speaks separately on the responsibility of the wife and wife's parents: if a wife self-willingly abandons her husband, she would be punished with a fine, if she had her own property; if she did not have her own property, a husband could beat her up if it pleased him and return her to the home; if he did not wish to do that, he could sell his wife to anyone (Аще ли в себѣ сама имѣть вѣновати се, штавајуци свога мѣжа, да аще има добитъсъ добитъсъ да наказујет се, аще ли добитъса не има, то своимъ тѣломъ да наказујет се, такоже вѣдеть изволеніе мѣжа ѹе. Наказавъ ю, да ю водитъ; аще ли не веудетъ ѿмѣ Ѹгодына водити, то наказавъ ю да ю продастъ камо ѿмоу годије).⁶⁶ A husband who drove away his wife would be fined and forced to return her to his home. If he would not obey God's Commandment “the Divine Church will tie such a person and he will be not in loving-kindness” (мѣж кои вѣдеть пѣстиль женѣ, да ю вѣзврати въ домъ свои; аще ли сего не имѣть послашати, то такови и што божествнице цркве да вѣдеть завезданъ и што господина еи да не вѣдеть Ѹ милости).⁶⁷ He who took a second wife had to give adequate indemnity to the first wife (И аще вторѣ женѣ поимѣть, да дастъ вѣдовѣ подобнѣ прѣвои).⁶⁸ Beside the husband who took a second wife, the individual who acted as officiant in the second marriage would be punished as well (или кто таковою женѣ дастъ, иже не имѣ ѵѣтѣ своје вѣзлеци, то и ты да ѻпадајетъ Ѹ такоже наказаніе, такоже и пѣстивин).⁶⁹ Such a marriage had to be dissolved. If the parents or some other kinsmen would kidnap a married woman, they would be punished according to their legal status (Аще ли котора родители штемлет се или инѣмъ коимъ симъ, то такови да наказујетъ се противъ сандъ своимъ).⁷⁰

As well as the Žiča chrysobull provisions on divorce, we have those contained by the *Zakonopravilo* or *Nomokanon* of Saint Sabba, created almost in

⁶³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 94.

⁶⁴ Ibid., p. 95.

⁶⁵ Ibid., p. 94. See Chapter 5, section 3.2.

⁶⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

⁶⁷ Ibid., p. 95.

⁶⁸ Ibid., p. 95.

⁶⁹ Ibid., p. 95.

⁷⁰ Ibid., p. 95.

the same period. At the beginning we find the rules of canon law. The *Nomokanon's* Chapter XIII, 4 has a title “On those who are divorcing from their wifes” (ГЛАВА .д. о распouющаючиx се съ женами).⁷¹ Apostolic Rule 48 exposes a provision of canon law on the indissolubility of marriage: “The layman who left his wife and took another, or took for wife a divorcee—let him be excommunicated” (Миръски чловѣкъ свою жену поустивъ и дроугою поиemy или поуценицею женивъ се штьлоучень).⁷² Rule 87 of the Council of Trullo (the Quinisext Council from 691–692) says: “A wife, left by her husband, who took for her husband another man, is an adulteress; and whoever has left his wife and has taken another, he has committed adultery, according to the Words of the Lord” (Иже шть моужа поуцена бывшии жена, за дроугы поидетъ, прѣлюбодѣца юсть. И поустивъи женоу свою и иною поимъ, прѣлюббы творить, по господию гласоу).⁷³ However, the greatest number of provisions concerning divorce is contained the translation of the *Procheiron* (Chapter 55 of *Nomokanon*). Chapter XI of the *Procheiron* has a title “On divorce and its grounds” (Περὶ λύσεως γάμου καὶ τῶν αἰτιῶν αὐτοῦ, Ο ρazdřešeniyi braka i o vinaхъ eгo) and contains 21 provisions of Graeco-Roman law.⁷⁴

The most systematic exposition on divorce and its grounds is contained in the *Syntagma* of Matheas Blastares in Chapter Γ-13, under the title “What are the grounds for divorce” (Ο γάμος ἐκ ποίων αἰτιῶν λύεται, Βράκъ отъ которыхъ винъ раздрѣшаеть се).⁷⁵ At the very beginning of Chapter 13, Matheas Blastares says that the *Procheiron* (*Zakon gradski*) in several places speaks on divorce, but Justinian's *Novella* entirely explains all grounds for divorce,⁷⁶ asked either from husband or from wife. It was necessary, says Blastares, because in antiquity laws permitted people to divorce without any grounds; a husband would simply say to his wife: “‘Woman, do on your own way’ and she to him ‘Man, do on your own way’” (Γύναι, πράττε τὰ σά· καὶ ταύτην ἔχείνω· “Ανερ, πράττε τὰ σά, Ζενο, δένι своя, и токи ономуу: Мужкоу, дѣні своя”).⁷⁷ As such a practice was suspended to Christians, “pious Tsars” exposed exactly all grounds for divorce: everything except the quoted was considered as unlawful divorce (ἀθέμιτον διασπᾶν, вензакон'но юсть съи растрѣзати).⁷⁸

⁷¹ Petrović and Šavljanin, *Zakonopravilo Svetoga Save I*, p. 100.

⁷² Ibid., p. 138.

⁷³ Ibid., p. 466.

⁷⁴ Ed. Zepos, vol. II, pp. 145–150; ed. Dučić, pp. 288–296; ed. Petrović, pp. 281b–287a.

⁷⁵ Ed. Ralles and Potles, p. 175; ed. Novaković, p. 183.

⁷⁶ Justinian's *Novella* CXVII, 8 and CXVII, 9.

⁷⁷ Ed. Ralles and Potles, p. 176; ed. Novaković, p. 184.

⁷⁸ Ed. Ralles and Potles, p. 176; ed. Novaković, p. 184.

At the beginning were cited grounds for divorce caused through the wife's fault (Αἱ αἰτίαι τῆς γυναικός, **Вини жены**). The text starts with the following words: "A husband sends to his wife the *repudium*⁷⁹ and keeps the dowry, as it was said, from the following grounds" (Καὶ ὁ μὲν ἀνὴρ πέμπει ῥεπούδιον τῇ γυναικὶ, καὶ τὴν προῖκα ταύτης ἀποκερδάίνει, ὡς εἴρηται, διὰ τὰς αἰτίας ταύτας, Ι οὐδέ μογέ ποσιλαίεται κηνιγού γενής ι πρικύο τοιε πριδοβιβαίεται, ιακόκε ρεγε σε, ζα сих ради винь):

- 1) If a wife comes to know that some persons threaten imperial power (τῇ βασιλείᾳ ἐπιβουλεύοντας, **на царство наставты**), and does not inform her husband;
- 2) If a wife was accused of adultery (*μοιχεία*, **прелюбодвиство**) and it was lawfully proved that she had committed adultery;
- 3) If she, in any way, brings into danger the life of her husband or comes to know that some other people plan that, and does not inform him.
- 4) If a wife goes with an unkown male person and without consent of her husband to a feast or watering-place (*συμποσιάζῃ ἢ συλλούηται, или с ними баниајети се*).
- 5) If a wife stays without the consent of her husband out of her house, except if she is with her parents; or, if the husband, from abovementioned grounds, throws her out of the house and she, having no parents, spent a night out of the house.
- 6) If a wife goes to watch horse-races, or to the theatre, or to the games with beasts (*Ἐὰν ἵππικοῖς, ἢ θεάτροις, ἢ κυνηγεσίοις παραγένηται, ἐπὶ τῷ θεωρῆσαι, Αἱψε на кониерискание, или на позори, или на ловленія, сирбъ на напо-γшенія збѣреи прїидетъ зрѣти*), without the knowledge of her husband or in spite of his prohibition.
- 7) "Scripture says that the adulteress has not to go back to her husband, meaning that he does not desire to accept her back. If the husband forgives her sin, it is not forbidden that he accepts her back, within two years, according to the Novels of Justinian and Leo the Wise."⁸⁰

After exposition of the grounds for divorce caused by the wife's fault, we find the grounds caused by the husband's fault (Αἱ αἰτία τοῦ ἀνδρός, **Вини мужевни**). A wife sends to her husband *repudium*, from the quoted grounds, and she can take her dowry and gift on account of marriage (*τοὺς γάμους δωρεάν τοῦ ἀνδρος*,

79 In Roman law, *repudium* was a breaking off of the contract of espousals, or of a marriage intended to be solemnized. The Greek text of the *Syntagma* used the word ῥεπούδιον, from Latin *repudium*, while the Serbian translation used the expression **книга** = lit. "a book", but also a decision, command.

80 Ed. Ralles and Potles, p. 176; ed. Novaković, p. 184. Cf. Justinian's *Novella cxvii*, 8.

и иже браковъ ради даръ моужевны) that she got from her husband; besides this, she has a right to administer the property granted to her children.

The grounds for divorce caused by the husband's fault are the following:

- 1) If a husband plots against imperial power, or knows that someone else hatches a conspiracy, and does not inform, directly or indirectly, the imperial authorities;
- 2) If he, in any way, brings into danger the life of his wife;
- 3) If he stains her honesty, encouraging her (his wife) into adultery with other men;
- 4) If a husband was unfaithful to his wife with another woman, and he does not want to break this relation;
- 5) If a husband in the same house or in the same town has a relationship with another woman and does not want to break it, in spite the warning of his wife, or her parents, or someone else.

The next title reads: "Divorces without indemnity and on dissolution of marriage because of entering a monastery" (Λύσις γάμου ἀξήμιος, καὶ περὶ τοῦ δι' ἀσκησιν λυομένου γάμου, Ραζδρεψενία βραγ'ναα βεζъ тьштети и о иже постину́ства ради раздражиаемоу бракоу):

- 1) A marriage will be divorced, without paying indemnity, when a husband cannot have sexual intercourse with his wife within three years, even if he does not want to do that. A husband keeps the gift before marriage (*donatio ante nuptias*).⁸¹
- 2) A marriage will be divorced when one of the spouses wants to accept tonsure (ἀσκησις, *постинуство*).⁸² This kind of divorce is possible even without consent of one of consorts "and we say that the marriage was divorced by Divine grace" (καὶ λέγομεν ἀγαθὴ χάριτι τὴν διάζευξιν γίνεσθαι, и глаголимъ благоу благодатию расправеженю бывати); the "remaining person" (τὸ περιλειφθὲν πρόσωπον, *остав'шее лицо*) can enter freely into a second marriage relationship.⁸³
- 3) A marriage will be divorced when either man or woman are in captivity and it is not clear, within five years, whether they were alive.⁸⁴

The following text exposes what kind of punishments there would be for those who had the impertinence to dissolve a marriage for any grounds which were

⁸¹ This provision was taken from *Basila xxviii, 7, 4.*

⁸² From Latin *tonsurā*, a shaving, from *tondere* = to shave, the act of clipping the hair or of shaving the crown of the head. In the Roman Catholic and Orthodox Eastern churches, it was the first ceremony used for devoting a person to the service of God and the Church.

⁸³ Cf. Justinian's *Novella cxxiii, 40.*

⁸⁴ Ed. Ralles and Potles, pp. 177–178; ed. Novaković, p. 187.

not quoted. Such persons would be imprisoned in a monastery and their property would be distributed to their descendants; as long as they are in the monastery, they can dispose only with a small part of their property. However, the legislator did not say what quantity of property the offenders had at their disposal and whether this property was sufficient for their sustenance in the monastery. If they did not have any descendant or older relative, their property would belong to the monastery in which they were imprisoned. Those persons who composed such illegal contracts (*ἀθέμιτα συμβόλαια, θεζακον' ηαδα χαπι-σανία*) would be punished with corporal punishment (it was not mentioned what kind of corporal penalty would be apply) and be exiled (*εἰς σῶμα ποιναῖς ὑποβάλλεσθαι, καὶ εἰς ἔξορίαν πέμπεσθαι, ττελεσνοι καζни прѣдати се и въ зато-ченїе отсылати се*).⁸⁵ If the divorced persons expressed a wish to live together again, before they entered the monastery, they were free to do that, and punishment would be pardoned and they could enjoy their property. If one of the consorts wished to restore a marriage union, and the second did not want that, the punishment would remain. At the end of the text we read: “We order it to be like this, according to the decision of God-loving bishops” (*ταῦτα δὲ κελεύο-μεν γίνεσθαι καὶ κατὰ πρόνοιαν τῶν θεοφιλεστάτων ἐπισκόπων, сіда же повелеваемъ бывати и промысломъ югородибивыихъ епископъ*).⁸⁶

Divorce by mutual consent was allowed if both consorts wished to enter a monastery. However, if one of the spouses entered into a marriage or fornicates, the whole of their property will belong to the children. If there were no children, the property would be received by the imperial treasury (*τὸ δημόσιον αὐτὴν διαδέξεται, цасрина сіе прѣниметь*).⁸⁷

However, it is not possible to say whether such detailed rules concerning the grounds for divorce were actually applied in mediaeval Serbia, because we do not have the relevant legal sources.⁸⁸

85 Ed. Ralles and Potles, p. 178; ed. Novaković, p. 187. The Greek text mentioned a penalty of *ἔξορία* = exile, while the Serbian text speaks of *zatočenje* = captivity. “Exile” as a punishment seems to me more probable, because Byzantine law does not know long-lasting deprivation of freedom.

86 Ed. Ralles and Potles, p. 179; ed. Novaković, p. 187. The provision was taken from *Basilika* XXVIII, 7, 6.

87 Ed. Ralles and Potles, p. 179; ed. Novaković, p. 187. The provision was taken from *Procheiron* XI, 4 (ed. Zepos. vol. II, p. 146), i.e. Justinian's *Novella CXXIII*, 40.

88 See S. Šarkić, “Die Gründe für die Ehescheidung im serbischen mittelalterlichen Recht”, in *Rechtstransfer in der Geschichte, Internationale Festschrift für Wilhelm Brauneder zum 75. Geburtstag*, ed. Gábor Hamza, Milan Hlavačka, and Kazuhiro Takii (Berlin 2019), pp. 349–358.

4 Extended Family (So-called *Zadruga*, Задруга)

Besides the immediate family, called *inokosna* or *inokoština* (“individual family”), consisting of a father, a mother and their children, in Serbian mediaeval law there also existed the extended family, called *zadruga*.⁸⁹ A *zadruga* refers to a type of rural community similar to the Roman *consortium*, which is historically common among Southern Slavs. Originally formed by one extended family or a clan of related families, the *zadruga* held its property, herds and money in common with usually the oldest member (*patriarch*, Serbian *starešina*, *cma-rešina*, *pater familias* of Roman *consortium*) ruling and making decisions for the family, though at times he would delegate these rights at an old age to one of his sons.⁹⁰ Within the *zadruga*, all of the family members worked to ensure that the needs of every other member were met.⁹¹

Serbian 13th- and 14th-century charters mention *zadruga*, but without using that term.⁹² The expression designating extended family was *kuća* (кућа) =

89 *Zadruga* is similar to Roman *consortium*.

90 Vuk Stefanović Karadžić (1787–1864), philologist and linguist, major reformer of the Serbian language in his *Srpski rječnik istumaen njemačkijem i latinskijem rijećima* [Serbian Dictionary, Parallelled with German and Latin Words] (Vienna 1852, reprint Belgrade 1972), explained *zadruga* as *Hausgenossenschaft, plures familiae in eadem domo* (p. 173). On *zadruga*, see also J. Peisker, “Die serbische Zadruga”, *Zeitschrift für Sozial- und Wirtschaftsgeschichte* 7 (1900), pp. 211–326, and B. Nedeljković, “Postanak zadruge” [“Genesis of Zadruga”], *Pravna misao u čast Živojina Perića* 3.11–12 (1937), pp. 595–604 = *Selected Works* (Podgorica 2005), pp. 453–462.

91 Serbian lawyer Jovan Hadžić (1799–1869), the author of the Serbian Civil Code (Српски грађански законик) of 1844, defined extended family (*zadruga*) as follows. Article 507: “*Zadruga* exists wherever a community of life and property is established and determined by ties of blood relationship or adoption” (Задруга је онде, где је смеса заједничког живота и имања свезом сродства или усвојењем по природи основана и утврђена); article 508: “All real estate and property found within a *zadruga* is not owned by one person but by all; and anything one person living in a *zadruga* acquires, is not acquired for his own self but for all” (Што је год имања и добара у задрузи, није једнога но свију, и што год који у задрузи прибави, није себи но свима је прибавио). The fact that the 19th-century Civil Code regulates *zadruga* means that such a kind of extended family still existed in Serbia, and Hadžić dedicated to it Chapter xv (articles 507–529), entitled “On the law of succession and relations in *zadruga*” (О наследним правима и односима у задрузи). We have to remark that the Austrian Civil Code (Österreichs Allgemeines Bürgerliches Gesetzbuch) of 1811, which was the role model for the Serbian Civil Code, does not contain a chapter concerning *zadruga*. See S. Avramović, “The Serbian Civil Code of 1844: A Battleground of Legal Tradition”, in *Konflikt und Koexistenz. Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert, Band II, Serbien, Bosnien-Herzegowina, Albanien*, ed. Thomas Simon with Gerd Bender and Jani Kirov (Frankfurt am Main 2017), pp. 379–482.

92 Recent works have pointed out that the word *zadruga* itself originated only in 1818.

house. Among Serbian charters, the Dečani chrysobull is especially rich with information on villagers' *zadrugas*: on the monastery's manor there existed more than 2,000 commoner's houses. According to the research of Stojan Novaković, who analysed the data given by the Dečani charter, the greatest number of houses had between 7 and 11 men, and only a few had between 13 and 16 males. The largest *zadruga* was of a certain family Lačković from the village of Seroš (Сирош), consisting of 19 males.⁹³ Here is the list of the family males presented by the Dečani chrysobull:

Tolislav, and his sons Radoslav and Bogoje, and Radoslav's sons Otmič and Vladislav and Krušac, and Bogoje's son Božić, and Tolislav's male cousins: Grade and Pribanje and Vojsil, and Grade's sons Vitomir and Bogoslav; Pribanje had a son Baldovin, and Tolislav's [another] male cousins: Dobroslav and Smilj and Miloš and Stepan; Dobroslav had a son Očinja and Hranislav Desimirović, and their grandfather was Lačko.

Толиславъ а синъ моу Радославъ и Богоје а Радославоу синъ Џмичъ и Владиславъ и Кроуш'цъ а Богою синъ Божикъ. а Толиславоу братанъ Граде и Прибое и Воисиль а Градетеви синъ Витомиръ и Богославъ. оу Прибога синъ Бал'довинъ. а Толиславоу братанъ Доброславъ и Смиљъ и Милошъ и Степанъ оу Доброслава синъ Јурина и Храниславъ Десимирикъ а д'вдь им лау'ко.⁹⁴

So, the structure of this *zadruga* was: head of the family was Tolislav, and he was the most senior person. The second generation was represented by Tolislav's sons Radoslav and Bogoje and Tolislav's male cousins Grade, Pribanje and Vojsil, who were sons of one of Tolislav's deceased brothers, and also Dobroslav, Smilj, Miloš and Stepan, who were sons of a second of Tolislav's deceased brothers. The third generation of the same *zadruga* consists of Tolislav's grandsons: Otmič, Vladislav and Krušac (sons of Radoslav) and Božić, son of Bogoje; also grandsons of one of Tolislav's deceased brothers, Vitomir and Bogoslav (sons of Grade) and Baldovin, son of Pribanje; finally Očinja, son of Dobroslav and grandson of second defunct Tolislav's brother. Hranislav Desimirović, who was mentioned at the end of the list, obviously was not born as Lačković, and he entered into the *zadruga* by marriage. Grandfather Lačko was the common ancestor of the family. At the time the list was compiled, Lačko was not alive, otherwise his name would have been quoted at the beginning of the record.⁹⁵

93 Novaković, *Selo*, pp. 159–161.

94 Edition Ivić and Grković, *Dečanske hrisovulje*, pp. 119–120.

95 Cf. Taranovski, *Istorija*, vol. II, pp. 52–53.

Similar data can be found in Saint Stephen's charter, King Milutin's charter presented to the monastery of Hilandar, and Saint Archangels' chrysobull.⁹⁶ However, those families were not as large as the Lačković's *zadruga*.

It was obvious that Serbian rulers tried to break extended families, because taxes were paid per house, and the intention was to increase the number of taxpayers. This is clear from the text of King Vladislav's charter issued to the church of Holy Virgin Bistrička (1234–1243), where we read: "A son, after his marriage, has to live with his father for three years; after three year he has to start a personal service to the church. If he is the only son, the monastery superior (hegoumenos) has to give him an assistant who will support him" (и синь съ штыцемъ да съди иженив се три годица. Конь трехъ годицъ да постоупа оу штобоу работоу цркви. Ако ли је јединајь, да моу игоумень даа стициника кога разоумѣ).⁹⁷ However, one century later we can see that *zadrugas* were still present in villagers' life (Dečani charter from 1330).

It seems that in the 14th century *zadrugas* went into decline, and the individual families were de facto separated. However, they pretended to live together with a purpose of avoiding excessive tributes and customary labour services. For this reason, article 70 of Dušan's Law Code says that "If there dwell in one house either brothers or father or sons, or any other, independent by bread or property but yet dwelling in one hearth, let him do service like other small people"⁹⁸ (И ксто се обрѣте оу јединои коукје, или братен'ци, или штыцъ шт синовъ, или инь ксто обдѣльнъ хлѣбомъ и иманѣмъ; и ако боудѣ на јединомъ угници, а тем'зїи обѣлиенъ, да работа ако ини малїи людї).⁹⁹

⁹⁶ The examples were minutely analysed by Novaković, *Selo*, pp. 159–173.

⁹⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

⁹⁸ The expression "small people" means commoners or villagers.

⁹⁹ Burr, "The Code of Stephan Dušan", p. 211; Novaković, *Zakonik*, p. 57; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

PART 5

Criminal Law

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Crime

Criminal law is the body of law that relates to crime. A crime consists of either the commission or the omission of a voluntary act (known as *actus reus*) punishable by death, imprisonment, fine, removal from office or disqualification to hold and enjoy any office of honour, trust, or profit. No act is criminal unless it is both prohibited and penalized by the law of the place where it is committed. In addition, to protect the innocent, the law requires the act to be committed with a particular state of mind known as *mens rea*, which means criminal intent.¹

1 Byzantine Concept of Crime

Byzantine law had a different concept of crime from modern law. Under the strong influence of canon law, some types of behaviour were considered unlawful acts and were not excluded from liability, especially if the conduct was regarded as a sin. The Church also made a notable contribution in the field of criminal law by insisting that crime should be treated from the point of view of sin, and consequently the theories of moral theologians concerning the place of intention in sin became part of the law of crime. In the case of pederasty (the carnal copulation of male with male, particularly of a man with a boy), for example, both persons, an adult (preditory) and a pubescent or adolescent boy (violated) shall be punished by the death penalty, except if the boy was under 12 years old (Οἱ ἀσελγεῖς, δοῦλοι τῶν ποιῶν καὶ ὁ πάσχων, ξίφει τιμωρείσθωσαν, εἰ μὴ ἄρα ὁ πεπονθὼς ἐλάττων εἴν τῶν ιδεῖς ἐτῶν, Скврънинци моужъска полоу, творен же и стражден, рек'ше приемлени сквръноу, мъчимъ да томлени боядесть, разбѣ аште пострадавы мън'ши юсть. ви. л'бътъ).² It is clear that the local age of consent was 12 years.

Attempted suicide (*αὐτοκτονία*) was a crime in all mediaeval laws, including Byzantine, where it was considered “a worse crime than divorce”. The *Syntagma* of Matheas Blastares contains a short chapter (B-12) under the title “On those who take their own lives, i.e. on suicides” (Περὶ τῶν βιοθανῶν, ἦτοι τῶν ἑαυτοὺς ἀναιρούντων, Ο νογждено оумър'шихъ, рек' ще сеbe оубиваштихъ). The chapter

1 See G.W. Brown, *Legal Terminology* (Upper Saddle River NJ 2008), p. 83.

2 *Syntagma* of Matheas Blastares, Chapter A-14, entitled “On pederasty” (Περὶ ἀρρένομανίας, Ο мъжченостътъ). Ed. Ralles and Potles, p. 105; ed. Novaković, p. 108.

has only one ecclesiastical rule of Timothy I of Alexandria (Τιμόθεος Α')³ and a law taken from the *Basilika* (lx, 3, 53), saying: "The one who has committed a suicide, or wanted to commit it from fear of crime and not from malady, shall be punished as the one who had killed somebody, and his property shall be confiscated" ('Ο ἔαυτὸν ἀνελὼν, ἢ ἀνελεῖν ἐπιχειρήσας, διὰ φόβον ἐγκλήματος καὶ μὴ διὰ νόσου, τιμωρεῖται ὡς ἀνελὼν ἔτερον, καὶ ἢ οὐσίᾳ αὐτοῦ δημεύεται, Ιήσεις οὐβιβίι οὐβιτι ηαύτην στραχα ραδι съгрѣшени, а не недоуга ради, томыимъ и есть такоже оубиви иного, и иманїе его разграблѧетъ се').⁴

Self-defence is an excuse for the use of force in resisting attack. In modern law victims of attack may use no more force than is necessary to stop the attack, but Byzantine law does not punish the killing of an attacker (if the attacker endangers the life of the victim).⁵ The *Syntagma* of Matheas Blastares in Chapter Λ (Л) - 6, entitled "On those who kill brigands" (Περὶ τῶν ληστάς ἀναιρούντων, Ο иже разбоинники оубиваюштихъ), contains a rule which says: "The one who has killed an attacker who threatened his life is not held guilty, because in trouble everyone has to defend himself, and not to expect help from the law. It is allowed without danger to kill a brigand who attacks" ('Ο τὸν ἐπελθόντα φονεύσας, ἐν ὕ περι τὴν ζωὴν ἐκινδύνευσεν, ἀνεύθυνος ἔστιν· ἐν γὰρ τοῖς κινδύνοις ὅφειλει ἔκαστος ἔαυτὸν ἐκδικεῖν, καὶ μὴ τὴν τῶν νόμων ἀναμένειν βοήθειαν. Τὸν ληστὴν ἐπιόντα, ἀκινδύνως ἔξεστι φονεύειν, Ιήσεις ηαύτην στραχα ρади съгрѣшени, имъже о животѣ бѣдствовати хотѣаше, неповинъ и есть; въ бѣдахъ бо дѣльжны и есть къждо севе отмыштати, а не законъ ноу ю ожидати помошть. Разбоинника нападаюшаго безъбѣдно лѣть и есть оубивати').⁶ There is a similar provision in Chapter Φ-7, taken from the *Procheiron* xxxix, 39 (i.e. the *Basilika* lx, 39, 14 and 15), which reads as follows: "The one who has killed an attacker, i.e. a person who rushed at him, and his life was in danger, is not held guilty" ('Ο τὸν ἐπελθόντα φονεύσας, ἐν ὕ περι τῆς ζωῆς ἐκινδύνευεν, ἀνεύθυνος ἔσται. There is a similar provision in the Statute of Dubrovnik, vi, 1 (ed. Dubrovnik 2002, p. 324): *Quicunque fecerit homicidium, nisi se defendendo, quod plene possit probari, moriatur.* Cf. Chapter 14 of the Statute of the Island of Korčula (today in Croatia), edited by J.J. Hanel, *Statuta et leges civitatis et insulae Curzulae (1214–1558)*, MHJSM, pars I, vol. I (Zagreb 1877), p. 24 and Chapters 45 and 99 of the Statute of the City of Split (also in Croatia), edited by J.J. Hanel, *Statuta et leges civitatis Spalati (1312)*, MHJSM, pars I, vol. II (Zagreb 1878), pp. 155 and 293.

3 Pope Timothy I of Alexandria, 22nd Pope of Alexandria and Patriarch of the See of Saint Mark, died about 20 July 384. He presided over the Second Ecumenical Council at Constantinople, called by Emperor Theodosius.

4 Ed. Ralles and Potles, pp. 149–150; ed. Novaković, pp. 155–156.

5 *Cod. Iust.* ix, 16, 2, Imp. Gordianus A. Quintiano (April 243): *Is, qui adgressorem vel quemcunque alium in dubio vitae discrimine constitutus occiderit, nullam ob id factum calumniam metuere debet; Procheiron* xxxix, 39 (ed. Zepos vol. II, p. 220): 'Ο τὸν ἐπελθόντα φονεύσας, ἐν ὕ περι τῆς ζωῆς ἐκινδύνευεν, ἀνεύθυνος ἔσται. There is a similar provision in the Statute of Dubrovnik, vi, 1 (ed. Dubrovnik 2002, p. 324): *Quicunque fecerit homicidium, nisi se defendendo, quod plene possit probari, moriatur.* Cf. Chapter 14 of the Statute of the Island of Korčula (today in Croatia), edited by J.J. Hanel, *Statuta et leges civitatis et insulae Curzulae (1214–1558)*, MHJSM, pars I, vol. I (Zagreb 1877), p. 24 and Chapters 45 and 99 of the Statute of the City of Split (also in Croatia), edited by J.J. Hanel, *Statuta et leges civitatis Spalati (1312)*, MHJSM, pars I, vol. II (Zagreb 1878), pp. 155 and 293.

6 Ed. Ralles and Potles, pp. 353–354; ed. Novaković, pp. 372–374.

φονεύσας, ἐν ὃ περὶ τὴν ζωὴν ἐκινδύνευεν, ἀνεύθυνός ἐστιν, Ιже нашъдшаго, рекше наѧхавшаго оубивъ, имъже о животе бѣд'ствоваше, неповин'нъ юстъ).⁷

Dušan's Law Code speaks on self-defence only in article 86: "When there is a homicide, he is held guilty who provoked it, even if he be killed himself" (Гдѣ се вебрѣте оубииство, он'зїи коинно боуд' зал'валь, да юстъ кривъ ако се и оубиє).⁸ "As killing involved a wergild, perhaps this clause implies that the kindred of the guilty party pay the fine, while the family of the man provoked should be free of liability."⁹

2 Serbian Concept of Crime and the Oldest Expressions

The oldest expressions to designate a crime in Serbian mediaeval law were *obida*, *zlo* and *krivina*. All these terms designate crimes *mala in se* (wrong in themselves), i.e. those that are wrong in and of themselves.

Obida (ѡбидѧ, ἀδίκημα)¹⁰ was mentioned for the first time in the charter of King Stefan the First Crowned, presented to the monastery of Saint Mary on the island of Mljet (1217–1227), where we read: "And whoever will be a lord after me, either my son or my relative, or someone else, he has no right to destroy this [that I gave to the monastery] doing any crime or violation" (Или кто и боуде владыка по мнѣ, или мои дѣти или присни мои, или ины кто, сега да не разори; или вѣзыдецидмоу коимъ оусильиемъ комоу).¹¹ The same expression was used in the charter of Saint Sabba to the monastery of Saint Nicholas on the island of Vranjina (1233), where we read: "If someone disturbs this holy place by any crime" (Аще ли кто имѣть сїе светоје мѣсто нечимъ обидети).¹² In both cases a substantive *obida*, or verb *obideti*, means violation of privileges given to the monastery.

Zlo (зло, зъло, зъл, *malum*, literally "evil", "harm") could be found in the oath of Bosnian *Ban* (governor, warden, Vice-Roy)¹³ Kulin to Ragusan Doge

7 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523. The Serbian text is longer.

8 Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

9 Burr, "The Code of Stephan Dušan", p. 215.

10 *Obida* is an Old Slavonic expression to designate a crime, mentioned in articles 2, 4, 7, 11, 13, 19, 29, 33, 34 and 37 of the so-called *Short Edition (Kratkaya)* of *Russkaya Pravda. Sources of Russian Law*, vol. I, ed. Zimin, pp. 77–80. The word is no longer used in modern Serbian.

11 Mošin, Ćirković, and Sindik, *Zbornik*, p. 109.

12 Ibid., p. 127.

13 *Ban* was a noble or sovereign title used in Croatia, Hungary, Bosnia, regions of Mačva and Banat (now in Serbia), Wallachia, Bulgaria and the Kingdom of Yugoslavia between the

Krvaš from 29 August 1189, where it was written: “as much as it is possible, without any evil intent” (колико може везъ въсега злога примиъсла).¹⁴ We read the same term in the *harangue* (προσίμιον) of the Hilandar chrysobull, issued by monk Simon (Stefan Nemanja) in 1198–1199: “and [God] provided all of them [Princes] with herds to be grazed and protected from every harm” (и ко моуждє дасть пасти стадо свое и съблouдати є ѿт всакога зъла находецааго на нє).¹⁵ The Latin word *malum*, corresponding to the Slavonic term *zlo* (evil, harm), can be read in two places in the treaty of Great Župan Stefan Nemanja with Dubrovnik from 27 September 1186: *Videlicet ut omnia mala ... Item et Sclavi ut apud Ragusium sint salvi et nullum maluum sit eis per terram aut per mare.*¹⁶ In later documents we can often find the same expression, especially in treaties with Dubrovnik. *Krivina* (кривина) was mentioned in the oath of Great Župan Stefan Nemanjić to the Ragusans (1214–1217), where we read: “And if any crime happened between the City [Dubrovnik] and my country” (њь ако се џуини кривина меѓу градомъ и мовъ земловъ).¹⁷ So, the King regulated cases of crimes in relations between Serbia and Dubrovnik.

Some legal documents call crime by the name of its consequence, such as *krv* (кръвъ) and *vražda* (вражда). Literally *krv* means blood, but in mediaeval Serbian legal terminology the word designates at the same time a crime of bloodshed (wounding of people), its consequence and a fine that had to be paid for the crime.¹⁸

7th and 20th centuries. The word is of Turkish origin, and the first known mention of the title *Ban* is in the 10th century by Constantine VII Porphyrogenitos as βοάνος, dedicated to the organization of the Croatian mediaeval State. According to his story, the Croatian State was divided into 11 ζουπανίας (*župas*) and the *Ban* rules over Krbava (τὴν Κρίβασαν), Lika (τὴν Λίτζαν) and Gacka (τὴν Γουιζησκά). After 1102, as Croatia entered a personal union with the Hungarian Kingdom, the title of *Ban* was dropped in favour of the new office title *Vice-Roy*, appointed by the Kings.

Bosnian rulers were called *Bans* from the 12th century until 1377, when Tvrtko I took the title of King.

Ban was also used in the Kingdom of Yugoslavia between 1929 and 1941. The State was divided into 9 governorships (*banovine*) and *Ban* was the title of the governor of each *banovina*. The weight of the title was far less than that of a mediaeval *Ban*'s feudal office.

The word *ban* is preserved in many modern toponyms in the regions of ex-Yugoslavia (Banovina, Banija, Banat, Banovo polje, Banova jaruga, Banovići, Banski dvori, Banovo brdo, etc.). The term is also found in personal surnames (Strahinić Ban, Sekula Banović, Banić, Banovac). See S. Ćirković, “Ban”, in *LSSV*, pp. 28–29.

¹⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 52.

¹⁵ Ibid., p. 68. See Chapter 8, section 2.

¹⁶ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 46, 47.

¹⁷ Ibid., p. 87.

¹⁸ *Krv* was mentioned in the following documents: King Milutin's treaty with Dubrovnik

The Old Slavonic term *vražda* (вражъда) has several different meanings and is derived from the word *vrag* (врагъ, *vragh*, *vorgū*) = ἔχθρος, “enemy”.¹⁹ The expression is present in almost all Slavic languages: in Bulgarian, Russian and Ukrainian (*vorožda*, ворожда) it means “enmity”, “hostility”. The Polish words *wrožda*, *wrožba*, *wroż* mean “blood feud”, “vendetta”, and there is the Czech *vražda*—“murder”, “homicide”.²⁰ In Old Serbian, a *vraždenik* (вражденик) is an enemy,²¹ and in legal terminology *vražda* also means the crime of homicide, its consequence and a fine that had to be paid for murder (*compositio pecuniaria pro homicidio*).²²

Under the influence of Byzantine law in mediaeval Serbia there prevailed a concept of crimes *mala prohibita* (prohibited wrongs)—those that are not in themselves wrong but are criminal simply because they are prohibited by law, prescribed either by State or Church authorities. In the abovementioned treaty of Great Župan Stefan Nemanjić with Dubrovnik (1214–1217) we read: “If they [parties to the contract] transgress this [the agreement]” (Ако ли сиε преступлѧ).²³ This means that it was prohibited to the contractual parties to break a provision prescribed by monarch. In the second chrysobull of King Stefan the First Crowned and his co-ruler King Radoslav to the monastery of Žiča (1221), crimes against morality (marriage and family) were called “transgression of law” (прѣструпленіе закона) or “transgression of frightful command” (сию страшною заповѣдь дѣ прѣструпає).²⁴ The same charter says that if someone takes a sister-in-law for a wife against the law (Аще кто сватвицъ прѣзъ здаконъ Ѹзме),²⁵ the fine shall be prescribed according to

(14 September 1302), edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 345; Tsar Dušan's chrysobull presented to the Ragusans (20 September 1349), edited by D. Ječmenica, *SSA* 11 (2012), p. 39; Dušan's Law Code, articles 103, 183 and 192 (edition Novaković, pp. 79, 141, 144; *Zakonik cara Stefana Dušana*, vol. III, pp. 126, 152, 276).

¹⁹ In modern Serbian *vrag* means “devil”, “Satan”, “the Evil One”.

²⁰ Under Slavic influence, the word penetrated the mediaeval Italian language, and it could be found in the *Statute of Skadar* (Cap. 266, ed. Bogojević-Gluščević, p. 195, *urasba over vendicta*).

²¹ Treaty of Radoslav, Župan of Hum with Dubrovnik (22 May 1254): ни ти ни ини твои людие продадени дарിю никомъре вражденикъ Дѣбропъркомъ. Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 206.

²² On *vražda* as a payment of 500 *perpers* for a murder committed between Ragusans and Serbs, see Chapter 9, section 2.1. See also R. Mihaljčić, “Vražda”, in *LSSV*, pp. 106–107, and Mažuranić, *Prinosi*, pp. 1602–1604. Cf. the article “Vrag” in Skok, *Etimologiski rječnik*, vol. III, p. 617.

²³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 87.

²⁴ Ibid., pp. 94–95.

²⁵ Ibid., p. 95.

the social status of the perpetrator.²⁶ It is obvious that in these three cases a crime was considered as a transgression of rules promulgated by canon law.²⁷

In later legal sources transgression of rules was referred to by the following terms: *prestupiti*, *preslušati*, *prečuti*, *pretvoriti*, *potvoriti*, and especially to act “against the law” (против закону, *contra legem*).²⁸ The Law Code of Stefan Dušan introduced the term *sagrešenije* (сагрешение, съгрешение) = sin,²⁹ where the concept of crimes *mala prohibita* prevailed. For example, article 5 mentions “spiritual sin” (“Bishops shall not curse Christians for spiritual sins”, И светите телје да не проклинаю христијан, за съгрешение духовно), while article 52 uses the same expression to designate a crime against the State (“For treason for any sin”, За невѣрје въсако съгрешение).³⁰ Later documents accepted the expression *sagrešenije*, as is clear from Tsar Dušan’s charter presented to the lesser lord Ivanko Probištitović (28 May 1350). The Emperor will deprive Ivanko of his manor “only in the case of treason, and not for any other sin” (да мъ се не потвори царство ми разве једине невѣре, а ни за једино ини съгрешение).³¹ Although the term *sagrešenije* prevailed, the old expressions did not completely disappear. For example, article 51 of Dušan’s Law Code uses the old term *zlo* = malum, evil, harm (“And if he do any evil”, ако које зло оучини).³² Legal terminology was not very developed and sometimes, beside the abovementioned terms, a crime was referred to with the entirely indefinite word *veliko delo* = great matter, as was case with article 151 of Dušan’s Law Code, speaking of juries (“For a great matter, let there be 24 jurors”, За велико дѣло да јесть, кд. поротници).³³

²⁶ See Chapter 15, section 2.2.

²⁷ Cf. S. Bojanin, “Braćne odredbe Žičke povelje između crkvenog i narodnog koncepta braka”, especially p. 427.

²⁸ Solovjev, *Zakonodavstvo Stefana Dušana*, p. 449.

²⁹ The Serbian translator of Matheas Blastares’ *Syntagma* uses the term *sagrešenije* as a translation of two Greek words: ἀμάρτημα and καθοστώσις. Ed. Novaković, pp. 110 and 325; ed. Ralles and Potles, pp. 107 and 307.

³⁰ Burr, “The Code of Stephan Dušan”, pp. 199 and 208; Novaković, *Zakonik*, pp. 10 and 45; *Zakonik cara Stefana Dušana*, vol. III, pp. 100 and 112.

³¹ Edited by V. Aleksić, *SSA* 8 (2009), p. 74.

³² Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 44; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

³³ Burr, “The Code of Stephan Dušan”, p. 527; Novaković, *Zakonik*, p. 118; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

3 Crime as Madness or Insanity

In several places in the treaties with Dubrovnik, crime was called **лѫдостъ** (*ludost* = madness) or **безумие** (*bezumije* = insanity). For example, King Milutin in his charter presented to the Ragusans from 14 September 1302 says: "And if someone has a mad slave, who performs acts of malice, his master shall be not guilty and [the authorities] shall search the culprit" (И Ѹ кога се ѿбрѣте лѫд ѿтрокъ, тере ѹто комѹ испакости, да Ѹ томъ господара не ицѹ, ны да си ицѹ к'рив'ца).³⁴ In the Ragusan's letter to Despot Stefan Lazarević (15 June 1417), complaining about Duke Peter who tried in Novo Brdo two of their merchants and seized their property, we read: "If a man was mad, let his body suffer ... And for the madness of others ... we punished them ... And if someone of our merchants did some insanity let his body and head suffer" (Ако је чловѣкъ лѫдоваљ нека мѹ пљть пати ... А за лѫдости инѣхъ ... и ѿвѣде ихъ пеđепъсасмо ... ако се која тамо слѹчи тेp нашъ трговыцъ које безумые Ѹчини, нека га ѿномѹ чловѣку пљть и глава пати).³⁵ In the following letter (9 August 1417), the Ragusans wrote to Despot Stefan Lazarević that some persons in Novo Brdo are making "madnesses" and that their property was destroyed, saying: "If a man did some madness or insanity it was right and worthily that his body suffer" (да ако чловѣкъ коју лѫдостъ или по неумѣтельствѹ Ѹчини, право и достоинно јест да мѹ пљть пати).³⁶

However, this does not (necessarily) mean that a culprit was found to be mentally ill if they could prove that he did not know the difference between right and wrong or did not appreciate the criminality of his conduct. He is considered as responsible (mentally sound); only his unlawful acts were regarded as some kind of insanity, "and let his body suffer" (**нека мѹ пљть пати**). Such a qualification was based on a biblical point of view, considering every law as a divine institution, a phenomenon of the Wisdom of God. This idea was expressed in Tsar Dušan's chrysobull giving the village of Potolino to the monastery of Hilandar (January–April 1348): the Serbian Emperor paraphrases one of the Proverbs of Solomon: "By me kings reign, and rulers decree what is just"³⁷ (М'юю царине царствѹјутъ и скифтри ихъ Ѹтврьждајутъ се и сил'ни съ Ѹсрдијемъ прав'дѹ пишѹјутъ).³⁸ Another Proverb says: "Doing wrong is like a joke to a fool,

34 Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

35 Edited by Mladenović, p. 69.

36 Ibid., p. 72.

37 The Proverbs of Solomon VIII, 15 (ΠΑΡΟΙΜΙΑΙ: δι' ἐμοῦ βασιλεῖς βασιλεύουσι καὶ οἱ δυνάσται γράφουσι δικαιοσύνην).

38 Edited by Ž. Vujošević, *ssA* 5 (2006), p. 117.

but wisdom is pleasure to a man of understanding” (ἐν γέλωτι ἀφρων πράσσει κακά, ἡ δὲ σοφία ἀνδρὶ τίκτει φρόνησιν).³⁹ An unlawful act is almost the same thing as insanity, because the law is not only *ratio scripta* (“written reason”), but a reflection of divine wisdom (*divinae sapientiae*), as well. To commit a crime means at the same time to sin against God and reason, i.e. to commit madness. Such a concept is illustrated by the biblical story of Amnon, David’s son, who wanted to commit the crime of incest with his sister Tamara. She told him: “No my brother, do not violate me, for such a thing is not done in Israel; do not do this outrageous thing. As for me, where could I carry my shame? And as for you, you would be as one of the outrageous fools in Israel” (μή, ἀδελφέ μου· μή ταπεινώσης με, διότι οὐ ποιηθήσεται οὕτως ἐν Ἰσραὴλ, μή ποιήσης τὴν ἀφροσύνην ταύτην· καὶ ἐγώ ποῦ ἀποίσω τὸ ὄνειδός μου; καὶ σὺ ἔσῃ ὡσ εἰς τῶν ἀφρόνων ἐν Ἰσραὴλ).⁴⁰ However, a culprit who abused his voluntary act is liable and guilty for a sin against God, i.e. his “madness” (ἀφροσύνη).

39 The Proverbs of Solomon x, 23.

40 The Second Book of Samuel (ΒΑΣΙΛΕΙΩΝ Β'), XIII, 12–13.

Culprit

A culprit is one accused or charged with the commission of a crime. It is also commonly used to mean one guilty of a crime or fault. The Serbian word is *krivac* (қрив'цъ) and can be found already in the treaties with Dubrovnik.¹

1 Individual and Collective Criminal Liability

The building blocks of criminal liability are *actus reus* and *mens rea*. In simple terms, *actus reus* is the guilty act and *mens rea* is the guilty mind, both of which are required for criminal liability. This is expressed by the maxim *actus non facit reum nisi mens sit rea*, which means that “an act alone will not give rise to criminal liability unless it was done with a guilty state of mind”.²

Serbian criminal law differentiates between individual liability (i.e. liability of natural persons—individuals) and collective liability (i.e. liability of legal persons—entities). Among entities, the sources mention the criminal liability of counties (*župa*, жупа),³ households (*kuća*, қуќиа, қоучта), towns (*grad*, градъ), villages (*selo*, село) and neighbourhoods (*okolina*, ѡколина).

Two articles of Dušan's Law Code speak on the liability of the household (*kuća*, literally house, home). Article 52 treats the matter of high treason (*Za невѣрје*)—acts against Tsar—and it says: “For treason for any case brother shall not pay for brother, father for son, kinsman for kinsman, if they dwell separately in their own houses: he who hath not sinned shall not pay anything. Only shall he pay who hath sinned, he and his household” (*Za невѣрје вѣсајсъ съгрѣшеније братъ за брата, и штврь за сына, родимъ за родима, кто съ ѿдѣл'нии ѿдѣлъ многазиин оу своихъ коуктахъ кто ѿ не съгрѣшиль, тѣзин да не плати ница, рѣзбъ ви'зиин кои ѿ съгрѣшиль, тогова и коукта да плати*).⁴ The principle of the collective responsibility of the household can be seen in article 71 as well: “Whosoever commits a crime, a brother or son or kinsman, who dwell in one

¹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 213, 216, 343, 454; SSA 11 (2012), p. 38; SSA 10 (2011), p. 63.

² E. Finch and S. Fafinski, *Criminal Law*, Pearson Education Limited (Harlow 2007), p. 2.

³ On counties (*župa*) see Chapter 9, section 4.4.

⁴ Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 45; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

house, all shall pay to the lord of the house, or hand over him who did the crime" (И ктo злo оучини братъ или сынь, или родомъ кои съ оу єдиной кѣкѣ, въсе да плати господарь кѣкѣ, или да дастъ кои є злo оучиниш).⁵ It is obvious that articles 52 and 71 are connected, with the difference that article 52 treats the noblemen class, because *nevera* (*невѣра* = *high treason*) was a crime that could be committed only by a nobleman. Article 71 concerns villagers. However, the collective liability of the household existed only for crimes punishable by a fine.

The liability of the village (*selo*) was already mentioned in King Milutin's treaty with Dubrovnik (14 September 1302). A neighbouring village was responsible for the damage caused to the Ragusan merchants (Да при коимъ их селѣ ѿтета наидѣ, да плати село ближ'нє).⁶ Several articles of Dušan's Law Code specified the liability of the village as well. Article 99, speaking of arson (Ѡ шпалгаючи коуки), says: "If anyone be found who has burnt a house, or a threshing floor, or straw or hay, let the village give up the burner: and if it do not give him up, then let that village pay what the burner would have suffered and paid" (Кто ли се наиде оужегъ коуки, или гоумно, или сламъ, или сено, да тозій село дада пожеж'цъ. ако ли га не дастъ, да платити шнози село цо би пожеж'ца патиљ и плати).⁷ According to article 20, "if any person be taken out of his grave for magic and be burnt any village that does this shall pay a fine"⁸ (И людїи кои съ вльхов'ствомъ оуцимлю из гробовъ тере их ізжижъ, село кои тозій оучини да плати враждъ).⁹ The laconic provision, "a brawl between villages, fifty perpers" (Пот'ка мегю сел'ми, 50, перъперъ),¹⁰ shows that if villages dispute between themselves touching land or boundaries, liability will be on them. According to article 92, "if the village do not deliver him [a thief] to the tribunal, let that village pay so much as the tribunal shall direct" (ако ли га не да село прѣда соудїаміи, цо покаже соудь да платити село тозіи).¹¹ Article 111 says: "Whosoever shall insult a judge ... if it be a village, let it be scattered and confiscated" (Кто

5 Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 58; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

6 Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

7 Burr, "The Code of Stephan Dušan", p. 217; Novaković, *Zakonik*, p. 76; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

8 The word translated as "fine" is *vražda*—a fine that had to be paid for murder.

9 Burr, "The Code of Stephan Dušan", p. 202; Novaković, *Zakonik*, p. 23; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

10 Article 77. Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 62; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

11 Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 72; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

се наиде сѹдїю шерамоти въ ... ако ли село да се распѣ и плаќнїи).¹² Article 159, speaking of merchants (Ѡ коуп’цех), runs as follows: “When merchants come for a lodging for the night, if the reeve or headman of the village do not admit them to rest in the village according to my law as it is in the Code, if the traveller lose aught, that reeve or headman shall pay all, for not having admitted him to the village” (Коуп’ци кои приходе поцїю на ложище, ако их не припоусти владаљцу, или господарь села тогди, да швл’ѓгѹ оу селѹ коуп’ци, по законѹ царства ми, како јесть оу закон’ници, ако ци изгоуби поутникъ шн’зи господарь или владаљцу въсе да плати, ере их несѹ оу село оупоустили).¹³ But, according to article 199, the village is not liable “if a horse die in a village and if the village hath not killed it, nor driven it away, but it has died by an act of God, the village shall pay nothing” (И ако конь лин’ше оу комъ селѹ, а не въде га село оубило ни шдгнало, ни оумр’ло шт бога да не плате ница).¹⁴ Two articles of the Code merit special interpretation. First, article 145, speaking of brigands and thieves (Ѡ гоусарѣ и татѣ), says: “In whatsoever village a thief or brigand be found, that village shall be scattered and the brigand shall be hanged forthwith, and a thief shall be blinded” (оу коемъ се селе нагије татъ или гоусаръ, този село да се распє, а гоусаръ да се швбѣси стрымоглавъ, а татъ да се швл’ѓпи).¹⁵ According to article 169, “if there be found a goldsmith outside the towns and market-towns of my Empire in any village, that village shall be scattered and the goldsmith branded” (Алије ли се шврѣте златарь исвѣтии градовъ и трѓговъ царства ми оу коемъ селѹ, да се този село распє, и златарь иждеже).¹⁶ It is clear that the village was not liable for the same crimes as culprits (thief, brigand and goldsmith). The responsibility of the village came from the fact that its authorities did not succeed to stop those guilty acts. Towns had the same liabilities: “and if there be a goldsmith in a town who coins dinars secretly, he shall be branded and the town shall pay such a fine as the Tsar says” (Ако се шврѣте златарь ё градѹ ковѣ динаре таинно, да се златарь иждеже, и градъ да плати глобоу што рече царъ).¹⁷

¹² Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 85; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

¹³ Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 124; *Zakonik cara Stefana Dušana*, vol. III, pp. 144–146.

¹⁴ Burr, “The Code of Stephan Dušan”, p. 539; Novaković, *Zakonik*, p. 146; *Zakonik cara Stefana Dušana*, vol. III, p. 278.

¹⁵ Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 112; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

¹⁶ Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, p. 133; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

¹⁷ Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, p. 133; *Zakonik cara Stefana Dušana*, vol. I, p. 202. The second half of article 169 occurs only in the Athos group of texts, but we may accept it as Novaković does.

As every village was responsible for crimes on its territory, the Code also provided the principle of collective liability for the neighbourhood—*okolina*. The neighbourhood (*okolina*) does not appear to have any precise significance, and it could mean town land that is around the city or the surrounding district. Similar to article 99, article 100 provides: “And if anyone outside a village burn a threshing-floor or hay, let the neighbourhood pay or hand over the burner” (Ако ли икто оужеже из’вънь села гъмно или сено, да плати школина волю да да пожеж’ць).¹⁸ According to article 58, “if any lord who owns one village in a district or among districts should die and any damage be done to that village by fire or other cause, then shall the whole district pay for that damage” (Кто ли оумръ а има едино село оу жълпе или мегю жоупами, цо се зло үчини томъзи селъ пожегом или инишь чимъ любо, въссоу тоузи злобъ да плати школина).¹⁹ Article 126 says: “If there be robbery or theft on urban land around a town, let the neighbourhood pay for it all” (Градца земля цо є школо града цо се на нви гоуси или оукрадвъ, да плати тозий въссе школина).²⁰ Concerning the unpopulated hills (С бръдъ поустѣ), article 158 orders:

If there be an unpopulated hill between two counties, the neighbouring villages which are around the hill shall keep the watch. If they fail to keep watch, whatsoever happen on that hill in the wilderness by way of damage or robbery or theft or any crime, then shall those neighbouring villages pay, to whom it has been ordered to keep the watch.

Ако є бръдо поусто мѣгю жоупами, села школ’ниа кога съ школо тогази бръда, да блюдъ стражъ. Ако ли не оуз’блюдъ стражъ, цо се оучини оу томъзи бръдъ, оу постоши чтета, или гоуса, или крага, или кое зло, да плати села коимъ юстъ речень блюсти поуть.²¹

¹⁸ Burr, “The Code of Stephan Dušan”, p. 217; Novaković, *Zakonik*, p. 77; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

¹⁹ Burr, “The Code of Stephan Dušan”, p. 209; Novaković, *Zakonik*, p. 49; *Zakonik cara Stefana Dušana*, vol. III, p. 114. “Estates were often scattered, and an owner may often have held villages in various and remote districts, isolated from his main property, surrounded by other owners. Such a village on the death of the owner would be exposed to the danger of looting by neighbours. The application of the general principle of collective responsibility was the surest means of protecting, in those times, the quiet succession of the next owner and the inhabitants of the village.” Burr, p. 209, comment on article 58.

²⁰ Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 97; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

²¹ Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 124; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

According to article 191, “if a brigand steal the Tsar’s swine, let the neighbourhood pay” (И ако г҃саръ оукраде свине цареве, да плати околина).²²

However, in some cases it was provided that the King personally repair the damage caused to Ragusan merchants, if the village did not pay for it (Ако ли село не плати, да плати кралевство ми).²³ A master has to pay a fine for the crime of bloodshed (*krv*, *кръвь*), done by his slave, or give the slave to the victim (Ако ли кръвь єчими дѣтикъ, да га пода господаръ; ако ли га не пода, да да плати господаръ).²⁴

Under the influence of Byzantine law the principle of individual liability penetrated Serbian law. For example, in Saint George’s charter (1300) we read: “*Vražda* [a fine for murder] is not to be taken from the town or from the village, only from a murderer who committed a crime, and by court action” (Вражда да се не оуѓима или є градоу или оу селоу разбѣ на єбици кто ю оучини и то соудомъ).²⁵ It is clear that a new rule of individual liability was adopted in Saint George’s charter, as according to the old customary law *vražda* was requested either from the town or from the village. There is a similar provision in Saint Archangel’s charter (1348), which says “and if it was found *vražda* on church’s villager” (И ако се обрѣте на црквеноу чловѣку вражда),²⁶ meaning that *vražda* would be taken only from the killer (church’s villager). However, it is disputable whether the rules of individual liability were applied only on the territories conquered from Byzantium (so-called “Greek Lands”) or on “Serbian Lands” as well.²⁷

2 The Concept of the Guilt

Guilt as a quality which imparts criminality to a motive or act, and renders the person amenable to punishment by the law, was not required in the oldest Serbian law. The crime of murder was avenged by blood feud, i.e. avenging the killing of kin on the person who killed him, or on his family. Lower offences

²² Burr, “The Code of Stephan Dušan”, p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol. III, p. 274.

²³ King Milutin’s treaty with Dubrovnik (14 September 1302), ed. Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

²⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

²⁵ Ibid., p. 326.

²⁶ Edited by Mišić and Subotin-Golubović, *Svetearhandelovska hrisovulja*, p. 112.

²⁷ According to Taranovski, *Istorija*, vol. II, p. 28 (377), under the rule of Tsar Dušan, the principle of individual liability prevailed even on the old Serbian territory (so-called “Serbian Lands”, contrary to “Greek Lands”).

(misdemeanours) were punishable by fine. However, there was no distinction between culprits who had committed their crimes with intention (direct or oblique), recklessly or accidentally. All of them were subjected either to the blood feud or having to pay a fine. But, under the influence of Byzantine and canon law, especially with the translation of the *Procheiron*, Serbian mediaeval law differentiated between intention (εἰδὼς, ἔκουστως, εἴδης, волео), recklessness (ἀκούσιως, ἀπειρία ή ράθυμία, неволею, неуваждество или неуваженіе) and simple accident (ἀπό τύχης, по прилоу).²⁸

3 *Mens Rea*

Mens rea (a guilty mind; a guilty or wrongful purpose; a criminal intent) as an element of criminal responsibility refers to the guilty mind for criminal liability. The types of *mens rea* are intention and recklessness. Intention is the most culpable form of *mens rea*. This is because it is more blameworthy to cause harm deliberately (intention) than it is to do so carelessly (recklessness). Recklessness is a less culpable form of *mens rea* based upon unjustified risk-taking.²⁹

The *Syntagma* of Matheas Blastares has no definition of *mens rea* and its types, but in Chapter Φ-5, speaking on homicide, there is the title “On intentional and reckless homicides” (Περὶ φόνων ἐκουσίων καὶ ἀκούσιων, Ο ουβιστεῖχν υληιχν и неволниχн).³⁰ At the beginning we find the 65th Canon of Holy Apostles, the fourth canon of Gregory of Nyssa and several rules of Basil of Caesarea. According to Gregory of Nyssa, intentional homicide is defined as premeditated and deliberate. Reckless homicide could be recognized when someone who intends to do something else, carelessly commit an offence (καὶ ἐκούσιος μέν ἔστι φόνος, δέ ἐκ παρασκευῆς τετολμημένος ... Οἱ δὲ ἀκούσιοι φόνοι, φανερὰ ἔχουσι τὰ γνωρίσματα, ὅταν τις πρὸς ἔτερόν τι τὴν σπουδὴν ἔχων, ἐξ ἀποτυχίας τῶν ἀνήκεστων τι δράσῃ, Ι υλοιος ουγοιοι есть ουβιστво иже отъ състроеніа на дръзноутїе ... Неволнаа ουбииствва іавлениа имоутъ познанїа, иегда кто къ иномоу чесомоу тъштанїе имыи, отъ погрѣшиенїа не хотештее что съдѣиетъ).³¹ At the end of the chapter we find several provisions on homicide, taken from the *Basilika* and speaking of reckless homicides.³²

28 *Procheiron* XXXIX, 5, 18, 25, 75, 76, 79, 86, ed. Zepos, vol. II, pp. 216, 218, 226, 227; ed. Dučić, pp. 397, 399, 411, 412, 413; ed. Petrović, pp. 322a, 322b, 323a, 326b, 327a, 327b.

29 Finch and Fafinski, *Criminal Law*, pp. 32, 36.

30 Ed. Ralles and Potles, p. 485; ed. Novaković, p. 513.

31 Ed. Ralles and Potles, p. 485; ed. Novaković, pp. 513, 514.

32 Ed. Ralles and Potles, pp. 493–494; ed. Novaković, pp. 522–523.

Byzantine law has no strict definition of intention, but it uses two terms to designate it: εἰδὼς and ἔκουσίος (вѣдѣши and волею in Serbian translation). Εἰδὼς means that for the existence of intention, a guilty mind was sufficient. However, much more in use is the expression ἔκουσίος, meaning will, purpose, design. For example, for premeditated murder the mental purpose, the formed intent to take human life, is needed. Intention does not exist if the perpetrator does not wish for the consequence of his act. According to the *Syntagma* of Matheas Blastares, “a person who killed someone, and wanted only to injure them, shall be not punished as a murderer” (καὶ ὁ φονεύσας, εἰ μόνον ἡθέλησε πλῆξαι, οὐ τιμωρεῖται ὡς φονεύς, и оубивы, аште тъкмо въсхоте оударити, не томимъ юсть яко оубийца).³³

Dušan's Law Code has no strict definition of intention either, but it has adopted a concept of Byzantine law. Several different terms were used to designate intention. Article 101 of the Athos manuscript, speaking on violence (О наездѣ), says that the penalty shall be “as set forth in the Law Book of the Holy Fathers ... as for the intentional murderer” (да прїнимъть казнь како пише Ѹ ЗАКОН'НИКОУ свѧтыхъ атъцъ ... да моучит' се яко и волныи оубивыца).³⁴ Two articles (76 and 87) mention crimes commit *nahvalicom* (нахвалицом), i.e. knowingly, intentionally.³⁵ The expression is known from the translation of Matheas Blastares' *Syntagma*.³⁶ Articles 57 and 99 use another term, taken from Byzantine law: *pizmom* or *po pizme* (пизмомъ, по пизмѣ, from the Greek word πεῖσμα, πίσμα),³⁷ meaning “by rancour”.³⁸ At the end of article 152, speaking on juries, we read:

33 Ed. Ralles and Potles, pp. 493–494; ed. Novaković, p. 522.

34 Burr, “The Code of Stephan Dušan”, p. 516; Novaković, *Zakonik*, pp. 77–78; *Zakonik cara Stefana Dušana*, vol. I, p. 186. In the *Syntagma* of Matheas Blastares (Φ-8) we read that in the event of a death ensuing as a result of an armed attack, if the guilty party were noble, his estate was forfeited, and if a commoner, he was beheaded and his body thrown to wild beasts. Ed. Ralles and Potles, p. 493; ed. Novaković, p. 523.

35 Karadžić, *Srpski Rječnik*, p. 379, translated the term *nahvalicom* (*nàvalicé*) as “mit Fleiß, de industria”.

36 Ed. Novaković, pp. 311, 361, 485.

37 Charles Du Cange in his *Glossarium ad Scriptores Mediae et Infimiae Graecitatis* (Lyon 1688), vol. I, p. 1141, explained the Greek word *pizma* with the following Latin expressions: *indignatio, odium, pertinaca, perfidia*.

38 The same expression could be found in the Ragusan's letter to Despot Stefan Lazarević from 15 June 1417. The Ragusans (Dubrovčani) complained of Duke Peter who had tied their merchants and sized their property “either at the urging of an evil person or by rancour” (тѣр или по наговору зал чловѣка или по коши пизми свѣза тѣи наше тѣговице и иманье имъ вѣзде). Edited by Mladenović, *Povelje i pisma despota Stefana*, pp. 68–69.

The word *pizma* has survived in modern Serbian, but it is rarely in use. According to Karadžić, *Srpski Rječnik*, p. 499, *pizma* is die Rachefehnschaft, inimicitia; *pizmator* is translated as der Rachgierige, ulciscendi cupidus; the verb *pizmiti se* = der Rache nachgeben,

"And on a jury there may be neither kinsman nor enemy" (и да нѣсть оу поротъ родима, ни пизменѣника).³⁹ The word translated as "enemy" is *pizmenik* (*pizmator* in the manuscript of Athos and *pizmatar* in Studenitza text), from Greek πεισμάταρης = *pertinax*, *pervicax*, *perfidus*.⁴⁰

Other articles of the Code do not contain any mention of intention.

The law on recklessness was subject to change over the years as courts fluctuated between a subjective and objective approach. The distinction between *culpa lata*, *culpa levis* and *culpa levissima*, known from Roman law, was not accepted in Byzantine legal miscellanies. For reckless crimes, the *Syntagma* of Matheas Blastares uses the general term ἀκουσίος (νειδολειο). In some cases, the *Syntagma* says that a culprit has committed a criminal act κατὰ ραθυμίαν (по неизрѣженіи, *ex neglegentia*). For example, if someone sets a house or wheat-stack on fire intentionally, he shall be at first whipped and then burned ("Ο οικίαν ἡ σωρὸν σίτου καύσας ἐν εἰδήσε, τυφθεὶς πρότερον πυρίκαυστος γίνεται, Ιήσε χραμμινού или стогъ гѣшенице пожегъ въ вѣдѣни, биенъ быивъ прѣвѣти, от'иемъ съжизняетъ се). "But, if that [arson] happened from recklessness or inexperience of the burner ... he shall be condemned for indifference and negligence" (καὶ εἰ μὲν κατὰ ραθυμίαν ἡ ἀπειρίαν τοῦ ἀνάψαντος τὸ πῦρ τοῦτο γέγονεν ... ὡς ἀμελήσας ὁ τοιοῦτος καὶ ραθυμήσας καταδικάζεται, и аште оубо по неизрѣженїи или неискоусѣствѣ вѣспалив'шаго огња се быть ... Іако неизрѣгъ сицевы и не радивъ осоуждають се). "A fire that broke out by accident shall be excused" ("Ο κατὰ τύχην γενόμενος ἐμπρησμὸς συγγινώσκεται, По прилоу'гдуо быв'шеме запаленїе праштгајетъ се).⁴¹ "A person who has killed someone from negligence or from recklessness shall be punished with five years of exile. Who has killed unintentionally shall be pardoned" (ἐπὶ δὲ τοῦ κατὰ βλακείαν ἡ ἀμέλειαν φονεύσαντος, πενταετὴς ἔξορια· ἐπὶ δὲ τοῦ ἀκουσίου, συγγνώμη δέδοται, По несыблоденїю же и неизрѣженїю оубивши. петолѣтнѹе подилемајетъ заточенїе; неизрѣг оубившомоу проштенїе дајетъ се).⁴²

exsequi quem; the adjective *pizmen* = *einem auffâsig, infensus*. Mažuranić, *Prinosi*, p. 925, explains *pizma* with the Latin words *odium, inimicitiae, dolus*. In Morton Benson's modern *Serbocroatian–English Dictionary* (with the collaboration of Biljana Šljivić-Šimšić) (Belgrade 1993), p. 405, *pizma* is translated as *spite, hatred*. Željko Bujas' *Croatian–English Dictionary* (Zagreb 2005), does not contain this word.

39 Burr, "The Code of Stephan Dušan", p. 527; Novaković, *Zakonik*, p. 119; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

40 Du Cange, vol. I, p. 1141.

41 Ed. Ralles and Potles, p. 249; ed. Novaković, p. 262. Cf. *Procheiron* XXXIX, 75, ed. Zepos, vol. II, p. 226.

42 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523. The Greek original says that the punishment is five years of exile, while the Serbian text speaks of five years of prison. In our translation we accepted the Greek text, because imprisonment as a penalty did not exist in Byzantine law.

"In all criminal offences we have to examine whether someone has committed a crime intentionally or unintentionally, and that way prescribe either a penalty according to the law or a milder punishment" (Ἐν πᾶσι τοῖς ἐγκλήμασι δεῖ ζητεῖν, εἰ ἐκ προνοίας ἡ κατὰ τύχην ἡμαρτέ τις· καὶ οὕτως ἡ κατὰ νόμου, ἡ πρατέρων τὴν τιμωρίαν ἐπιφέρειν, Βία βετερὸς συγρέψειν κτο, ι σιτε ι πο ζακονογ ι πο κροτυδιη τομλενη ηποσιτη).⁴³

Dušan's Law Code in several articles differentiates between crimes committed intentionally and recklessly. Article 76, speaking of straying (Ω ποπαши), says that *popaša* (straying) could be done "recklessly" (грѣхомъ) and "knowingly" (нахвалицомъ).⁴⁴ For recklessness, the Code uses the term *greh* (грѣхъ, ἀμαρτία), literally meaning sin, breaking of God's laws, but behaviour that is against the principles of morality, as well. The expression *greh* (sin) undoubtedly came into Serbian mediaeval law under the influence of ecclesiastical ideas, and it is present in the Saint Stephen's and Decani charters, which provide a case where a monastery was destroyed by fire due to someone's recklessness (И ако по грѣху погори манастиръ; ... и ако се по нѣкојемъ грѣху нанесе погорѣти манастиру).⁴⁵ According to article 87 "where there occurs homicide without intention and violence, the fine shall be 300 perpers. But if a man kill intentionally, both his hands shall be cut off" (Кто нѣст дошъль нахвалицомъ по сиаѣ терѣ ючишиль оубиство, да плати, тѣ, перъперъ; ако ли боудаѣ приишъль нахвалицомъ, да моя се вебъ роуцѣ штетикѣ).⁴⁶ However, in two manuscripts from the 17th century (Ravanitza and Sofia transcripts), the words *kto nest došal nahvalicom po sile* ("without intention and violence") and *nahvalicom* ("intentionally") were replaced with *не хотецие, не хотенѣмъ* and *хотением, хотенѣнъ*.⁴⁷ The significance is the same ("with" and "without intention"), but the expressions from the Ravanitza and Sofia transcripts are closer to the idea of recklessness expressed in the *Syntagma* of Matheas Blastares.⁴⁸

43 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

44 M. Burr translated the expression *grehom* as *in error* ("The Code of Stephan Dušan", p. 212). Đ. Krstić did the same in his translation of Bistritza transcript (*Zakonik cara Stefana Dušana*, vol. II, p. 246). In my opinion *recklessly* would be better, because it is more in accordance with legal terminology.

45 Mošin, Ćirković, and Sindik, *Zbornik*, p. 464; *Dečanske hrisovulje*, ed. Ivić and Grković, p. 134. See R. Popović and S. Šarkić, "Greh", in *LSSV*, p. 133.

46 Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 68; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

47 Novaković, *Zakonik*, p. 68; *Zakonik cara Stefana Dušana*, vol. III, pp. 316 and 378.

48 See N. Kršljanin, "Vinost u Dušanovom zakoniku" ["Mens rea in Dušan's Law Code"], in *НОМОФУЛАЗ, Collection of Papers in Honor of Srđan Šarkić*, ed. Tamara Ilić and Marko Božić (Belgrade 2020), pp. 269–282.

4 Mental Capacity or Competence

In some cases Byzantine law pays special attention to mental state, i.e. capacity or condition of one's mind in terms of ability to do or not do a criminal act. According to the *Syntagma* of Matheas Blastares, "neither a child, i.e. seven-year-old boy, nor lunatic, if they kill someone, shall be responsible, according to the law of murder" (Οὔτε ἄνφανς, τουτέστιν ὁ ἐπταέτης, οὔτε ὁ μαινόμενος, φονεύων ὑπόκειται τῷ περὶ ὀνδροφόνων νόμῳ, **Ни же ин'фась, иже је седмогодишни, ни же неистовен се оубиваје подлежитъ иже о моужеоубиству закону**).⁴⁹ So, only minority and insanity were considered as mental incompetency for crime of murder. The provision was known in Serbia with a translation of the *Procheiron*.⁵⁰ However, only *infans* (ἄνφανς, **ин'фась**), a child under the age of seven, was mentioned as a minor. On young persons between 7 and 16 years (ἀνηβόι, **млади**) and their responsibility for murder, the Byzantine legal miscellanies do not speak.

The Law Code of Stefan Dušan does not contain provisions on mental capacity. Article 166, speaking of drunkards, does not excuse a drunken man of responsibility if he strikes anyone or cuts him or wounds him.⁵¹ According to the Code, such criminal acts deserved very severe punishment.⁵²

5 Accomplices

Anyone who takes part with another in a commission of a crime is called an accomplice. Byzantine criminal law knows for accessory liability and makes a clear difference between: a) an abettor (ὁ ἐντειλάμενός)—one who commands, advises, instigates, or encourages another to commit a crime; b) a participant (ὁ σύμμαχος)—one who contributes to or aids in the commission of a crime by some act, deed, word, or gesture; c) an aider (ὁ συνυπουργῶν)—one who advises, counsels, procures, or encourages another to commit a crime,

⁴⁹ Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

⁵⁰ *Procheiron* XXXIX, 80, ed. Zepos, vol. II, p. 226: Οὔτε infans, τουτέστιν ἐπταέτης, οὔτε μαινόμενος φονεύων ὑπόκειται θανάτῳ. Serbian translation, ed. Dučić, p. 412: **Седмы атье утрове или бесењи, алије оубијеть кого неповиниње јесть смртни.**

⁵¹ The Law Code of Stefan Dušan expresses the idea of so-called *actio libera in causa* (lit. "action free in its cause"), i.e. a legal principle which says that a person who voluntarily and deliberately gets drunk or causes mental illness in order to commit a crime may under certain circumstances be held liable for that crime even though at the time he commits the prohibited conduct he may be blind-drunk and acting involuntarily.

⁵² See below, explication of article 166.

actually or constructively present when a crime is committed; d) an accessory after the fact (*σπουδὴν εἰσενεγκων*)—one who receives, relieves, comforts, or assists another with knowledge that the other person has committed a crime.⁵³ With the translation of the *Procheiron*, Serbian mediaeval law accepted the following expressions regarding accomplices: *повелелѣви компъ* (abettor), *помагающи* (aider) and *съвѣдѹющи и послѹживши* (accessory after the fact).⁵⁴

Although Matheas Blastares took the provisions on criminal law from the *Procheiron*, he used different terms for accomplices. For example, Chapter Φ-8 says: “He who ordered someone to kill shall be sentenced as a murderer” (Ο ἐντειλάμενός τινι φονεῦσαι, ώς φονεὺς κρίνεται, Ζαποβέδαβἱ κομογ οὐβιτι, τακο ουγεῖπα соудитъ се).⁵⁵ Chapter A-13, treating the crime of abduction, uses for aiders the expression *съдѣстствовање* (*συνεργήσαντες*).⁵⁶ The long Chapter A-2, speaking on different types of heresies, says that Maximus the Cynic (Greek Μάξιμος ὁ Κυνικός, Latin *Maximus Cynicus*)⁵⁷ “had a participator” (ἔχων καὶ τινα συνεργὸν, имѣє нѣкојего съпостѣшника)⁵⁸ in committing a crime.⁵⁹ An accessory after the fact was called ὁ συνειδὼς, *съвѣст’никъ*. Chapter K-23, speaking on brigands (Περὶ λῃστῶν, О разбоиницихъ) orders: “If someone intentionally takes the stolen object, he shall be accomplice to a perpetrator and shall be punished

53 *Procheiron* xxxix, 8, 40, ed. Zepos, vol. II, pp. 217, 220.

54 Ed. Dučić, pp. 398, 403; ed. Petrović, pp. 322a, 323b–324a. Cf. N. Kršljanin, “Saučesništvo u srednjovekovnom srpskom pravu” [“Accompliceship in Medieval Serbian Law”], in *125 godina od rođenja Aleksandra Vasiljevića Solovjeva* (Belgrade 2016), pp. 165–181.

55 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

56 Ed. Ralles and Potles, p. 103; ed. Novaković, p. 106.

57 Maximus was intrusive Patriarch of Constantinople in 380, where he became a rival of Gregory of Nazianzus. Born in Alexandria into a poor family, Maximus was the son of Christian parents who had suffered on account of their religion, but whether this was from Pagan or Arian violence is not clear. Maximus united the faith of an Orthodox believer with the garb and deportment of a Cynic philosopher. He was initially held in great respect by the leading theologians of the Orthodox party. Athanasius, in a letter written about 371, pays him several compliments on a work written in defence of the Orthodox faith.

58 Ed. Ralles and Potles, p. 70; ed. Novaković, p. 73.

59 Taking advantage of the sickness of Gregory, and supported by some Egyptian ecclesiastics, sent by Peter II, Patriarch of Alexandria, under whose direction they professed to act, Maximus was ordained, during the night, Patriarch of Constantinople in the place of Gregory, whose election had not been perfectly canonical. The conspirators chose a night when Gregory was confined by illness, burst into the cathedral, and commenced the consecration. They had set Maximus on the archiepiscopal throne. The news quickly spread, and everybody rushed to the church. The magistrates appeared with their officers; Maximus and his consecrators were driven from the cathedral.

like him" ("Ο ἐν εἰδήσει ὑποδεχόμενος τὸ κλαπὲν πρᾶγμα, καὶ ὁ συνειδῶς τῷ ἀμαρτάνοντι, ἐν ἵσῳ αὐτῷ τιμωροῦνται, Ἰже въ вѣдѣнїи подемлѣ оукараден' поюто вешть, и съвѣст'никъ боудетъ съгрѣшаюштомуоу, въ рав'но томоу томить се").⁶⁰ However, the word σύμιαχος (съпособникъ in Serbian translation), meaning in legal terminology a participant—one who contributes or aids in the commission of a crime, was used in Matheas Blastares' *Syntagma* to mean an ally, fellow-fighter. In the Preface (Προθεωρίς),⁶¹ it was said that Gregory of Nyssa was an ally of his brother Basil of Caesarea (Τούτῳ καὶ ὁ ἀδελφὸς Γρηγόριος σύμιαχος ἦν, Семоу и братъ Григорије съпособникъ є).⁶²

Dušan's Law Code has no precise definition for accessory liability, but it contains several terms to designate accomplices. Article 132, speaking of booty, uses the terms *преводъчіа* (receiver)⁶³ and *съвѣтникъ* (abettor).⁶⁴ Special punishment was provided for an abettor in article 69, which forbade commoners' councils: "let the leaders be singed" (и да се ѡсмѣдѣ поводъчіе).⁶⁵ An accessory after the fact was mentioned by article 10, regarding heretics: "and whosoever harbours him [heretic], he too shall be branded" (кто ли га имѣ таити, и тѣзы да се жеје).⁶⁶ The case of aiders was regulated by article 131: "In the army there shall be no brawling. If two quarrel let them fight a duel and no other soldier shall help them. And if anyone go to succour or help, let him be flogged" (На воинсцѣ свадѣ да нѣсть; ако ли се свадита два, да се бѣста а инь никто ѿдь воинникъ да имъ не поможе; ако ли кто потече и поможе на порвицѣ, шнизији да се

60 Ed. Ralles and Potles, p. 334; ed. Novaković, p. 353.

61 Ed. Ralles and Potles, p. 1. There is no such title in the Serbian translation.

62 Ed. Ralles and Potles, p. 14; ed. Novaković, p. 14.

63 The expression *provodčja*, translated by Malcolm Burr as "receiver" (p. 523), is of Serbian origin. Several charters and treaties with Dubrovnik mention *provod* (entice) as a separate crime (*delictum sui generis*). Article 93 of the Code has a title "Of enticing men" (О провођењи чловѣка). On that crime we shall speak later.

64 The manuscript of Prizren has, instead of *svetnik* (transcripts of Athos, Baranja and Bistriza), *vestnik* (вестникъ), what is obviously an error of the copyist (Novaković, *Zakonik*, pp. 100 and 225; Solovjev, *Zakonodavstvo Stefana Dušana*, p. 461, n. 4; Taranova, *Istorija*, vol. II, p. 33; Bubalo, *Dušanov zakonik*, p. 198). *Svetnik* comes from the verb *sveštati se*, meaning to arrange, to agree, to take counsel with. The term was taken from the *Syntagma* of Matheas Blastares (see above). The same expressions for receiver and abettor can be found in the verdict for the crime of larceny, promulgated by the tribunal from the city of Srebrenica, almost after 100 years (10 November 1457), where we read: *ни свѣтники, ни частники, ни преводачыя несѹ крагне*. Edited by Solovjev, *Odabrani spomenici*, p. 219.

65 *Zakonik cara Stefana Dušasna*, vol. II, p. 246; vol. III, p. 118.

66 Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 14; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

εἵτο).⁶⁷ One more term for accomplice is *podvod* (подъводъ), but it can only be found in the titles of transcripts from Athos and Bistritz (Ѡ подъводъ).⁶⁸

Neither the *Syntagma* of Matheas Blastares nor the Law Code of Stefan Dušan speak on attempt—an intent to commit a crime combined with an act falling short of the thing intended.

67 Burr, “The Code of Stephan Dušan”, pp. 522–523; Novaković, *Zakonik*, p. 99; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

68 Novaković, *Zakonik*, p. 135; *Zakonik cara Stefana Dušana*, vol. I, p. 204; vol. II, p. 214. Literally the word means “escort”, but the article speaks on a lord who brings with him (in his escort) a brigand to the Tsar’s Court.

Punishment

Punishment is any fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offence committed by him, or for his omission of a duty enjoined by law.¹

The Serbian legal sources frequently use the word *nakazanje* (наказање) for punishment,² although Dušan's Law Code mentions once the term *kazn* (казњь)³ and once *osuždenije* (осуђденије).⁴ The verb "to punish" was used in the form *nakazati* (наказати) or *nakazivati* (наказивати),⁵ and it penetrated into temporal legislation from Slavonic translations of the Holy Scriptures. For the first time the term was mentioned in the *Typicon* of Hilandar monastery, composed by Saint Sabba (1199), in two different meanings: "educated, learned" (наказанъ, as a translation of the Greek word ἐμπειρος)⁶ and "to punish" (наказовати).⁷ However, Dušan's Law Code more often uses the abbreviated formula *da se kaže* (да се каже = "let him be punished"), instead of *da se nakaže* (да се накаже).⁸

The expressions *nakazanje* (as a translation of the Greek word εἰσήγησις = suggestion) and *kazn* (as a translation of the Greek words ποινή and τιμωρία = punishment, penalty) are used in the translation of the *Syntagma* of Matheas Blastares.⁹ However, the Serbian translator used several different terms for punishment: *томаљеније* (ποινή, τιμωρία), *истезаније* (έξέτασις), *могка* (κόλασις) and *глојба* (ποινή, meaning fine). And for the verb "to punish", he used *отмышлати* (έκδικεν) as well.¹⁰

Articles 11 and 19 of Dušan's Law Code use the formula *da ih vedevsa* (да их вѣдевъса = "let them punish") or *da se pedepsa* (да се педепса = "let him be

¹ Black's Law Dictionary, p. 1234.

² The word in modern Serbian is *kazna* (казна).

³ Article 100 of the manuscript of Athos. Novaković, *Zakonik*, p. 78; *Zakonik cara Stefana Dušana*, vol. I, p. 186. Cf. Mažuranić, *Prinosi*, pp. 492–498.

⁴ Article 129. Novaković, *Zakonik*, p. 98; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

⁵ In modern Serbian we use the verb *kazniti* (казнити).

⁶ Ed. Ćorović, p. 208.

⁷ Ed. Ćorović, pp. 114, 115; ed. Jovanović, pp. 94, 95.

⁸ Articles 6, 8, 109, 140–142, 144–147, 149, 165, 173, 178.

⁹ Ed. Ralles and Potles, pp. 9 and 179; ed. Novaković, pp. 9 and 187.

¹⁰ Solovjev, *Zakonodavstvo Stefana Dušana*, p. 465.

punished"),¹¹ derived from the Greek verb παιδεύειν = to punish, to educate.¹² The same expression was repeated in Tsar Dušan's chrysobull confirming the founding of the Episcopacy of Zletovo (1346–1347), where we read: "And if it happened that Despot John Oliver and his descendants did something wrong to me the Tsar or to the Serbian throne, let them be punished according to my holy Imperial will" (аще и поне некои слоуучит се деспотоу џливероу и съгрѣшитъ коимъ либо дѣломъ царьствоу ми и столоу срѣпскомоу, или по нѣмъ чеда юго такожде съгрѣшеть царьствоу ми да се ѿни сами педепсоують по изволѣнию свѣтаго царства ми).¹³ The verb *pedepsati* in the meaning of "punish", became common in 15th-century documents,¹⁴ as well as the noun *pedepsija* (педепсија) = punishment.¹⁵ Even the Croatian translations of Austrian laws from 18th and the beginning of 19th centuries use the much more Greek word *pedepsija* (or *pedepsa*, *pedipsa*) rather than any other Croatian expression or Italian *kaštiga* (from *castigo*).¹⁶

The right to punish (*ius puniendi*) belonged to the monarch, as is clear from the often repeated formulas *da se kaže*, *da se nakaže* or "to receive a wrath and punishment from me, the King" (да прими гнѣвъ и наказаніе ут краљевства ми).¹⁷ Under the influence of Byzantine law in mediaeval Serbia the following types of penalties were introduced.

¹¹ Burr, "The Code of Stephan Dušan", pp. 200 and 202; Novaković, *Zakonik*, pp. 15 and 22; *Zakonik cara Stefana Dušana*, pp. 102 and 104.

¹² In Ancient Greek, the verb παιδεύω, παιδεύειν usually means "I educate, to educate" (see *A Greek-English Lexicon*, compiled by H.G. Liddell and R. Scott [Oxford 1976]), but in Byzantine Church terminology it meant "to punish". For example, in the Greek translation of the Book of Hosea (ΟΣΗΕ) we read (vii, 12): ... καθὼς τὰ πετεινὰ τοῦ οὐρανοῦ κατάξω αὐτούς, παιδεύσω αὐτοὺς ἐν τῇ ἀκοῇ τῆς θλίψεως αὐτῶν ("I will put them down like the birds in the sky. When I hear them flocking together, I will punish them").

¹³ Edited by S. Mišić, *SSA* 13 (2014), p. 188.

¹⁴ For example in the Ragusan's letter to Despot Stefan Lazarević from 15 June 1417, edited by Mladenović, *Povelje i pisma despota Stefana*, p. 69.

¹⁵ For example in the charter of Ivan Crnojević to the Cetinje monastery (4 January 1458), we read: "and to receive the punishment of exile from the monastery as an offender of God and a malicious person" (и да прими гедепсије и изгнаніе оть монастыра како прѣсторгнико Божи и злобники). Novaković, *Zakonski spomenici*, p. 781.

¹⁶ Solovjev, *Zakonodavstvo Stefana Dušana*, p. 467 and note 1. Cf. Mažuranić, *Prinosi*, pp. 490 and 909.

¹⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 274.

1 Capital Punishment

Capital punishment (punishment by death) was mentioned for the first time in Dušan's Law Code. It is true that King Stefan the First Crowned in *The Life of Saint Simon* wrote that his father Stefan Nemanja has punished Bogomilian heretics by the death penalty (they were burnt in the fire; иѡвъинъ иждѣж),¹⁸ but as this text is a hagiography, not a legal source, we are not sure whether we can trust it. According to Dušan's Law Code, punishment by death was executed by hanging and burning. It is remarkable that capital punishment was more often pronounced for crimes against property (гѹсѧ = brigandage, robbery) than for murder (only for the killing of clerics or closest relatives—father, mother, brother or child). The death sentence is provided for in the Code also in cases of a commoner who rapes the wife of a nobleman.

2 Corporal Punishments

Corporal punishments as any kind of punishment of, or inflicted on, the body in mediaeval Serbia consisted of both hands being cut off ("both his hands shall be cut off", да мѹ ѿ већ рѹцѹ втсек),¹⁹ combined with the cutting out of the tongue (articles 21, 162) and slitting of the nose (articles 53 and 54). Article 69 provided for the cutting off of the ears, and according to article 166 one eye could be removed (да мѹ ѿ око изме). According to article 145, "a thief shall be blinded" (а татъ да ѿ вслѣпи), and a brigand and thief, "who is taken in the act ... shall be blinded and hanged" (гѹсадъ и татъ вбличнї ... да ѿ вслепе и већсе).²⁰

All those punishments that had mutilation as a consequence came into Dušan's legislation under the influence of Byzantine law, starting with the *Ecloga*. Though the *Ecloga* continued to be based on Roman law, Leo III the Isaurian revised it in the spirit "of greater humanity" (ἐπιδίορθωσις εἰς τὸ φιλανθρωπότερον)²¹ and on the basis of Christian principles. In criminal law the application of capital punishment was restricted to cases involving treason, desertion from the military, and certain types of homicide, heresy, and slander. The code eliminated the death penalty for many crimes previously considered

¹⁸ Ed. Jovanović, p. 36. Cf. *Ecloga* XVII, 52, ed. Burgmann, p. 242: Οἱ μανιχαῖοι καὶ μοντανοὶ ξίφει τιμωρεῖσθωσαν.

¹⁹ Articles 87, 97 and 131 of the Code. Article 166 speaks of the cutting off of one hand.

²⁰ Article 149.

²¹ Ed. Burgmann, p. 160.

capital offences, often substituting mutilation. Those ideas were known in Serbia from the translation of the *Syntagma* of Matheas Blastares. In Chapter M-9, Matheas Blastares says that the Emperor,²² who established a revision of the old laws, did not apply any penalty that existed in the *Digests* and *Institutes*: he did not order decapitation, stoning, burning, hanging or suffocation. If he ordered sometimes the application of some cruel punishment, it was not the death penalty, but exile or imprisonment, or blinding, or cutting off of the hand, “because the stream of time can give time to a culprit to transform himself and to repent for his crimes” (ἢ δύναιτ ἀν καὶ ἐπιστ οφῆς καιρὸν παρασχεῖν τῷ τιμωρούμένῳ, τῇ τοῦ χρόνου παρατάσει, καὶ τῶν ἐπταισμένων ματάνοιαν, ιέκε βεζμογούτη οὐβο ι οερασθενία βρέμε ποδατι τομιμομου βρέμενης προτεγενέμει ι σερβ-σπενικε ποκαλανίε).²³

Though mutilation as a consequence of corporal punishment was applied in Serbia only in Dušan's legislation, we have a testimony that it had been used earlier. King Stefan the First Crowned in *The Life of Saint Simon* wrote that his father ordered the cutting out of the tongue to the Bogomilian teacher and superior (ουχιτελο ιε ι ιαχελ' ιικου ιχ ιεζηκις ουρτεζα ου γρτανι ιερο).²⁴ However we are not sure whether we can trust this isolated information.

As corporal punishment we can mention also branding on the face, singeing and flogging. Branding on the face was provided by article 10 of the Code for “any heretic²⁵ who be found living among Christians, let him be branded on the face and driven forth” (И кто се вбреће еретигъ, живѣ въ христијанехъ, да се же же по вбразъ и да се прожене).²⁶ Singeing (осмоудити, *comburere capillos de capite et barbam*, burning of the hair and beard) was prescribed for a commoner who insulted a lord (article 55), for the leaders of commoners' councils (article 69) and for a serf who flees anywhere from his lord (article 201).

Before the promulgation of Dušan's Law Code only the Žiča chrysobull mentions flogging as corporal punishment—for a wife who self-willingly abandons her husband (see Chapter 15, section 3, speaking on divorce). The Code prescribed flogging in five cases: 1) for a monk who takes a bribe (article 24, but only in the Rakovac text, which could be a late emendation); 2) for a lesser lord who insults a greater (article 50); 3) for a commoner who utters heretical words

²² The text does not mention the name of the Emperor, but it must be Basil I.

²³ Ed. Ralles and Potles, p. 371; ed. Novaković, p. 391.

²⁴ Ed. Jovanović, p. 36.

²⁵ The heretics mentioned in article 10 were Bogomils, the most numerous heretical sect in the Balkans.

²⁶ Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, p. 14; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

(article 85); 4) for a soldier who succours or helps someone fighting a duel (article 131); and 5) for a drunken man who molests or insults anyone (article 166). The number of strokes (100) was provided only for the drunken man. In other cases the Code says indefinitely “let him be flogged with sticks” (ΔА СЕ БІЕ СТАПІИ).²⁷

3 Pecuniary Punishments or Fines

Pecuniary punishments or fines were promulgated in cattle and as a penalty in money. In charters from the 13th century, pecuniary punishments in cattle prevailed, while in the 14th century, under the influence of Byzantine law, almost for all offences, persons were sentenced to pay a penalty in money. Dušan's Law Code contains only three cases when pecuniary punishments were not in money: 1) from a lord who was summoned and who did not come, six oxen shall be taken (article 56); 2) for straying, done knowingly, the fine shall be six oxen (article 76); 3) a lord has to pay sevenfold for a horse, which died in his land and he has taken keep for the horse (article 200).

The first term used for a fine is *osluga* (ωσλούχα), and it was mentioned in the Žiča chrysobull.²⁸ The expression refers to “disobedience” to the law (from the verb *poslušati* = to obey, and substantive *posluh* = obedience), but it was used only in ecclesiastical documents. Temporal legislation adopted the word *globa* (глоба) as a general term for all fines. This is clear from a short fragment of Saint George's chrysobull, where we read: “All fines shall belong to the Church” (Ποιηήσεται τοις όλαις τα πόνημα της Εκκλησίας).²⁹ The passage was followed by a long list of crimes imposing a pecuniary punishment or mulct.

Dušan's Law Code in six articles uses the formula “let him pay sevenfold” (ΔА ПЛАТИ САМОСЕД'МО), meaning to increase to seven times the amount of fine. First, article 30 orders: “And whosoever shall molest or damage anyone without judgment, let him pay sevenfold” (ΔАКО ЛИ ОУР'ЕВ ВЕЗЬ СОУДА, ИЛИ КОМ' ЗАБАВИ, ΔА ПЛАТИ САМОСЕД'МО). According to article 93: “Whosoever enticeth a neighbour's man into another estate, let him pay sevenfold” (Кто проводи дрѹжнаго

²⁷ See M. Ivanović, “Telesne kazne u srednjovekovnoj srpskoj državi od vremena Nemanjića do pada Despotovine” [“Corporal Punishments in the Medieval Serbian State from the Nemanjić Dynasty to the Fall of Serbian Despotate”], in *NOMOPHILAX*, ed. Ilić and Božić, pp. 283–304.

²⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

²⁹ Ibid., p. 326.

ЧЛОВЕКА ОУ ТОУЖДОУ ЗЕМЛЮ, ДА МОУ ГА ДАА САМОСЕД'МАГО). Article 102 prescribes: "There shall not be deposited any caution by any man at any time. And who-soever shall so do, he shall pay sevenfold" (ОУЗДАНІА ДА Н'БСТЬ НИКОМЬ НИЦА НИКАК'ВА, КТО ЛИ СЕ ПОДЗДА ЗА ЦЮ, ДА ПЛАТИ САМОСЕД'МО). There is article 143, providing responsibility of the Warden of the Marches for raids by foreign enemies.³⁰ According to article 187, "if there be one who stay in that village [where the Tsar and Tsaritza were staying] contrary to the law and the Tsar's command, the elder of the shepherds shall be delivered bound to that village and he shall pay sevenfold the damage done" (АКО ЛИ СЕ КТО ВЕРБТЕ И ПРВЛЕЖИ ОУ ТОМ'ЗИ СЕЛД, ПРВЗ ЗАКОНЬ И ПОВЕЛЕННИЕ ЦАРЕВО, ВН'ЗИ КОИ ИЕ СТАРГИ ПРВД СТАНОВИ ДА СЕ ДА СВЕЗДАНЬ ВНОМДИ СЕЛД, ЦЮ БОУДЕ СТРДВЕНО ВСЕ ДА ПЛАТИ САМОСЕДМО). Article 200 has already been mentioned.³¹ However, the Code does not spell out the basic amount.

4 Confiscation and Exile

Confiscation as the seizure of private property by the King or Tsar without compensation to the owner, often as a consequence of conviction for crime, in Serbian mediaeval law was often combined with exile—expulsion from the country.

In the first place, confiscation was pronounced for the high treason (*нєвѣра, nevera*)—acts against the King (Tsar). However, in Serbian legal documents there is no single provision speaking of confiscation as a penalty for high treason, but it seems that it was a strict disposition of customary law. This is clear from some narrative passages of the charters. Saint George's charter, for example, exposes a story of a nobleman Vericha, who committed a crime of high treason, escaping to the Bulgarian *sebastokrator* Kaloyan Sinadin. For this reason, King Milutin gave as a present all Vericha's estate to the church of Saint George (Изневѣри бо се Вериха кралевствоу ми и побѣже к себастократору Калояну Синадину. Да цю се вѣрбта Верихово гдє любо, да хъ и цркви Светаго Георгија).³² The same King, in the charter presented to the monastery of Saint Stephen in Banjska, declared:

³⁰ See Chapter 9, section 4.5.

³¹ Burr, "The Code of Stephan Dušan", pp. 204, 216, 516, 525, 530, 539; Novaković, *Zakonik*, pp. 29, 73, 79, 110, 143, 144; *Zakonik cara Stefana Dušana*, vol. III, pp. 106, 124, 126, 140, 278; vol. I, p. 206.

³² Mošin, Ćirković, and Sindik, *Zbornik*, p. 323.

Village in Ras Tušimlja, and village in Zeta Hrastije, I found given by my father and my mother and confirmed by my will, to Iritza, not to be taken from him, except in the case of high treason. As he committed a crime of high treason I confiscated all his estate and I donated it to the church of Saint Stephen.

Село оу Раств Тушимлја, и оу Зетић Храстије, вбрѣтохъ записано атъцемъ ми и материю и съ моимъ х'т'ениемъ Ирици, яко да им'се не оуз'моу развѣ неувѣре; да кралевствоу ми изненавишє се. Зато оузъмъ ихъ и записахъ цркви Светаго Стефана.³³

For the act of confiscating of property, the Serbian legal sources use several different terms:³⁴ “let all he hath be taken from him” (да моу се въсе оузмѣ цю има);³⁵ “to distrain upon” (да се плени);³⁶ and “let it be scattered” (да се распї).³⁷

Confiscation was pronounced for the following crimes: stealing in a church (И аще к'то оукраде ч'то въноутрь црквє);³⁸ “if any church official takes bribes” (И яко се наидѣ владаљ'ца црковны оузъмъ мито),³⁹ “whosoever shall be found to have driven men of the Church into an imperial estate” (кто ли се наидѣ изъгнавъ метохію на мироп'шиноу);⁴⁰ refusal of a judge's envoy or clerk (Кто се наидѣ отбивъ соудина сокал'ника, или пристава),⁴¹ and “whosoever shall insult a judge” (Кто се наидѣ съдюю ѿрамотивъ).⁴²

Exile (*proscriptio, bannitio*) with confiscation was provided in three articles of Dušan's Law Code: 1) for a “half-believer” (Roman-Catholic) who took “a Christian woman” (Greek Orthodox) and refused to be baptized into Christian-

³³ Ibid., p. 461.

³⁴ The expression “confiscation” (in Serbian *konfiskacija, конфискација*) was not in use in mediaeval law. It is a word of modern legal terminology.

³⁵ Articles 107 and III.

³⁶ Article 107. The Serbian word used in the text is *da se pleni*. The verb *pleniti* comes from the noun *plen* = prey, booty, spoils, and in modern Serbian it is used for war booty, not for confiscation of property. M. Burr (“The Code of Stephan Dušan”, p. 517) did not understand correctly the expression *da se pleni*, and he translated it as “shall be imprisoned”.

³⁷ Article III. Cf. Saint Stephen's charter (Mošin, Ćirković, and Sindik, *Zbornik*, p. 465): “let his house be scattered” (да моу се којџиа распє), and Tsar Dušan's charter to the church of Saint Archangels Michael and Gabriel in Jerusalem from 29 April 1348 (edited by Novaković, *Zakonski spomenici*, p. 708, para. VI): “let it be scattered” (да се распє).

³⁸ Saint Stephen's charter. Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

³⁹ Article 24.

⁴⁰ Article 34.

⁴¹ Article 107.

⁴² Article III.

ity (И ако се наиде полдъвбр'цъ, оузынь христоаницъ ... ако ли се не кръсти);⁴³ 2) for a heretic “living among Christians” (И ако се вбреће еретигъ, живѣ въ христоанихъ);⁴⁴ and 3) for a monk who took bribes (Ако ли калоугеръ кои оузме мить).⁴⁵

5 Imprisonment

Imprisonment as the act of putting or confining a person in prison (Greek φυλακή or δεσμωτήριον) was rarely used in Serbian mediaeval law. Charters promulgated before Dušan's Law Code mention only one case of imprisonment. In the text of Saint Stephen's charter we read: “Whosoever shall be found to beat up a steward [of the church's manor] has to give six sheep, and a thug shall be put in a dungeon⁴⁶ and cannot be released before three months” (Владаљца бивше .S. вб'цъ, и боица да се връже въ тъм'ници, и да се не поустии првежде Г. м'ссеџе).⁴⁷

Dušan's Law Code gives three cases when imprisonment was provided as a penalty: 1) for weddings done “without the blessing and permission of the Church” (безъ благословенїа и оупрошениа цркве), those brides and bridegrooms shall be dissolved and kept in a dungeon until they pay a fine (такови да се разлъчть, и да се въсадитъ въ там'ници доњедеже глобъ да есть);⁴⁸ 2) for “a monk who abandons the habit,⁴⁹ let him be kept in a dungeon until he return again to obedience and let him be punished” (И калоугеръ кои свръже расе, да се дръже оу тъмници, докла се вбрати оу послышанїе, и да се педеп'са);⁵⁰ and 3) for a drunkard who molests anyone (алие ли піанъ задерє).⁵¹ However, the

43 Article 9.

44 Article 10.

45 Article 24 of the manuscript from Rakovac.

46 The Serbian word is *tamnica* (*тамница*), i.e. “dark place”. In modern Serbian *tamnica* is obsolete, and the word *zatvor* (*затвор*) = jail, prison, is in use.

47 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

48 Article 3, but only in Sofia's manuscript from the middle of the 17th century. Novaković, *Zakonik*, p. 9; *Zakonik cara Stefana Dušana*, vol. III, p. 360.

49 *Раса* in the original text, from the Greek τὸ ράσον. The rule was taken from the *Basiliika IV, 1, 14*, i.e. Justinian's *Novella CXXIII, 42*, entitled ΠΕΡΙ ΕΚΚΛΗΣΙΑΣΤΙΚΩΝ ΔΙΑΦΟΡΩΝ ΚΕΦΑΛΑΙΩΝ. If a monk leaves a monastery and comes back to a secular life (εἰς κοσμικὸν βίον), the State authorities have to retain him and throw him (βάλλεσθαι) again into a monastery.

50 Article 19. Burr, “The Code of Stephan Dušan”, p. 202; Novaković, *Zakonik*, p. 22; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

51 Article 166. Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, p. 131; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

Code does not give the precise duration of imprisonment: article 3 says “until they pay a fine” and article 19 “until he return again to obedience”. In the third case (article 166) the Code is more undefined, ordering “he [a drunkard] shall be ... cast into prison, and taken from prison”. From a modern point of view it could be unclear, but in mediaeval customary law maybe a solution existed. We have to remember that the first two cases were under the jurisdiction of an ecclesiastical court, having cognizance mainly in spiritual matters. “A dungeon” mentioned in articles 3 and 19 was a prison belonging to a Church and used for some kind of custodial arrest and temporary detention. Only in the case of the drunkard (article 166) can we speak of prisons as State institutions.

Except the cases where imprisonment (dungeon, jail, prison) was explicitly provided, Dušan's Law Code in several articles for deprivation of freedom uses the formula “let them be bound” (да се свежд). First, article 32 orders: “Ecclesiastical persons who administer Church villages and Church lands and drive the Church labourers and shepherds away, those who have driven the men away, let them be bound ... and let the Church keep them until they have restored the men whom they drove away” (Людје црквовни, кои дръже црквовна села, и земли црковне, а прогнали соут мероп'хе црквовне, или влаже; шнизији коиню съ раз'гнали людји, да се свежд ... и да их дръжи црквса до где скоупе людји кое съ раз'гнали).⁵² According to article 145, “in whotsoever village a thief or brigand be found ... the headman of the village shall be brought before me the Tsar” (оу кое се селе наре тати или гоусарь ... а господаръ села тога да се довѣде свезан къ царствоу мє).⁵³ Article 187 says that “the elder of the shepherds shall be delivered bound to that village” (шн'зи кои є старби прѣдь станови, да се да свѣзанъ шномѣни селѣ), where the Tsar and Tsaritsa were staying.⁵⁴ The second half of article 198 orders: “And if a lord do not pay the tribute in kind [“soče”] at this period [Saint Demetrios' Day and Christmas], let him be bound in the Tsar's court and kept until he pay double” (ако ли сокїа властелинъ не да на те рокове, властелинъ тъ да се свеже на царьскомъ дворѣ и да се дръжи доклѣ плати двойномѣ).⁵⁵ However, all quoted artticles do not treat imprisonment as a lengthily deprivation of freedom, but rather as a temporary detention (custodial arrest).

⁵² Burr, “The Code of Stephan Dušan”, p. 204; Novaković, *Zakonik*, p. 30; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

⁵³ Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 112; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

⁵⁴ Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 143; *Zakonik cara Stefana Dušana*, vol. I, p. 206.

⁵⁵ Burr, “The Code of Stephan Dušan”, p. 538; Novaković, *Zakonik*, p. 265; *Zakonik cara Stefana Dušana*, vol. III, p. 278.

Several articles from the Law Code of Stefan Dušan mention a “dungeon”—an underground prison or cell placed in the strongest part of a fortress.⁵⁶ First, article 112 under the title “On escape from a dungeon” (Ѡ оутеченији тъмничомъ)⁵⁷ orders: “If any man escape from a dungeon, so soon as he come to my court, be he my man or a man of the Church or of a lord, forthwith let him be free. And if he escape, whatsoever he leave, let it belong to him from whom he hath escaped” (Кои чловѣкъ оутече ис тъмнице, с чимъ прїидѣ на дворъ царства ми, или јесть чловѣкъ царства ми, или црковны, или властѣлскы, с темъ зи да јесть свободны; аци јесть оутѣкъ лу оу тога зи чловѣка цю вѣдѣ штавиль, тѣзин да има комѣ боядѣ оутѣкъ).⁵⁸ Article 113, entitled “On prisoners” (Ѡ соужније), says: “And any prisoner kept in my court, if he escape to the court of the Patriarch, let him be free, and similarly if to the court of the Tsar, let him be free” (Кои се сѣжынъ дрѣжин оу дворъ царства ми, тере оутече на дворъ патріаршъ да јесть свободнъ; и такожде на дворъ царевъ да јесть свободнъ).⁵⁹ According to article 184 (“Of prefects”, ѡ киѳаллиахъ): “My lords and prefects who hold the towns and market-towns may none of them receive any man for the dungeon without my warrant. And if any such do receive such a man without my command, let him pay me 500 perpers” (Властвле и киѳалле царства ми, кои дрѣже градовѣ и трѣговѣ; никто шт ныхъ да не приме чловѣка оу тъмници безъ книге царства ми; аци ли кто кога приме прѣзаповѣдь царства ми да плати царство ми, ф., перъперъ).⁶⁰ Finally, article 185, entitled “Of dungeons” (Ѡ тъмниче), prescribes: “In the same way, he who holds my dungeons shall receive no man without my warrant” (Тѣмъ жде образомъ. кто дрѣже тъмнице царства ми, да никога не приме ничега чловѣка, безъ книге повелѣнїа царства ми).⁶¹

The analysis of the abovementioned articles shows that in mediaeval Serbia there existed different types of dungeons: patrimonial dungeons, belonging to the Church or to the noblemen (articles 112 and 113); State dungeons in the

⁵⁶ The Serbian word is *tamnica* (*тамница*)—a dark or subterraneous prison. In modern Serbian, the word *tamnica* is used only in literary works. In legal terminology, the word *zatvor* = prison, jail (from verb *zatvoriti* = to imprison, to put into prison) is in use.

⁵⁷ Manuscripts from Athos and Bistrizza have the title “On prisoners” (Ѡ сѫжније). Novaković, *Zakonik*, p. 86; *Zakonik cara Stefana Dušana*, vol. I, p. 188; vol. II, p. 198.

⁵⁸ Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 86; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

⁵⁹ Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 87; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

⁶⁰ Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 142; *Zakonik cara Stefana Dušana*, vol. III, p. 154.

⁶¹ Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 142; *Zakonik cara Stefana Dušana*, vol. III, p. 154.

towns (article 184); and the Tsar's dungeons (article 185). However, it is not clear for what types of crimes imprisonment in a dungeon was pronounced.

6 Spiritual Sentences

The spiritual sentences known in Serbian mediaeval law were anathema (анатема, анаѳема, ανατεμα, from Greek ἀνάθεμα, literally “that which is set aside, accursed”)⁶² and excommunication (отглоученик, ἀφορισμός, literally “casting out”).

Anathema was the highest form of ecclesiastical censure directed at obstinate or unrepentant heretics, normally found at the conclusion of conciliar decrees and canons. Serbian charters often use the formula “let him be damned, let him be cursed” (да јесът проклетъ) for anyone who violates Church privileges. For example in Saint George's charter we read:

If someone brings an *apokrisiarios*⁶³ into a monastery, let him be damned by Lord God Pantokrator and by the All-undefiled Lady and let him be killed by Saint George and be his adversary here and on the Last Judgment of Christ, and let him pay a tariff of 100 perpers.

Ако ли и кто оуведе апоклисара оу манастиръ, да јесът проклетъ шт Господи Бога вседржитела и шт пребристие Богородице, и да га оубие светыне Георгије и да моу је соупърникъ зде и на страшномъ соудици Христовѣ и да плати оу царину .Р. перьперь.⁶⁴

At the end of the same charter we can find the following sanction:

Whosoever be found, inspired by the Devil, to change any word of this chrysobull ... let him be damned by Lord God Pantokrator and by the Holy Trinity, Father, Son and Holy Spirit, and by the All-undefiled Mother of God ... and by Saint John the Baptist and Forerunner, and Four Saint Evangelists, and Twelve Saint Apostles, and 318 Saint Nicene Fathers, and by all apostles and prophets and martyrs and saints and fasters, and by all Orthotox Tsars and Kings ... and to pay a tariff of 500 perpers.

⁶² See A. Papadakis, “Anathema”, in *ODB*, p. 89, and R. Popović, “Anatema”, in *LSSV*, p. 13.

⁶³ Apokrisiarios (ἀποκρισάριος, Latin *responsalis*) in its ecclesiastical sense, the messenger or representative of a bishop or hegoumenos in dealings with higher authorities.

⁶⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 328.

Кто ли се швреще оухицрениемъ дияволиемъ прѣтворивъ єдиноу чртоу шт сихъ вишеписанихъ Є сѣмь христовоулѣ ... да юсть проклѣть шт Господа Бога вседржитела и шт Светынѣ Троице, Свѧтыца и Сына и Светаго Духа и прѣчиствиє юго матерѣ Богородице ... и светаго Прѣдтече и Креститела Івана, и светыхъ .Д.хъ енаггелистъ, и шт .Вl. връховныхъ апостоль и шт .ТИ. свѣтыхъ штъцъ никеискіхъ, и шт всѣхъ апостоль и пророкъ и моученикъ и свѣтитель и постникъ, и сихъ правовѣрныхъ царь и краль ... и да плати оу царинou .Ф. перперъ.⁶⁵

We have to note that spiritual sanction was pronounced together with a payment of fine.

At the end of Saint Stephen's charter we read a similar anathema:

And if someone have impertinence to change by force any word [of this chrysobull] ... let him have as adversary The Most Holy Mother of God, and to be cursed by Saint John Prophet and Forerunner and Baptist, and by the Twelve Apostles, and by 318 Saint Nicene Fathers, and by Saint Promartyr Stephen, and Saint Simon and Saint Sabba ... and to be damned by me, the sinful King, and to have my anathema.

Аще ли к'то држ'не посилииемъ потворивъ и єдиноу чртоу раззорити ... и да имада въ м'есто помоци соупънициоу прѣсветоую Богородицоу, и да приниме проклѣтие шт светаго Івана пророка и Прѣдтече Креститела и шт .Вl. апостоль и шт .ТИ. свѣтыхъ штъцъ иже въ Никеи, и шт сего светаго пръвомоученика Стефана, и светаго Симеона и светаго Савы ... и шт мене грѣш'нааго да юсть проклѣть и анаѳема.⁶⁶

Anathema as spiritual sentence is present in article 13 of Dušan's Law Code: "and from now whosoever shall be appointed Metropolitan, bishops or hegoumenos by bribery, let him be accursed, as also he who appointed him" (и шт съда кто се наидѣ поставивъ по митѣ митрополита, или епископа, или игуумна, да юсть проклѣть и wh'зїи кои га је поставилъ).⁶⁷ For anyone who molests a monk, article 30 uses a formula "he shall not be blessed" (да н'єсть благословенъ).⁶⁸

65 Ibid., p. 329.

66 Ibid., p. 469.

67 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 17; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

68 Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

Excommunication entailed the exclusion of the transgressor from the community or fellowship of the Church and its sacraments, especially the Eucharist. Dušan's Law Code in articles 4 and 5 prescribes excommunication as spiritual sentence ("let him be separated from the Church", *да се отглоучи от цркви*).⁶⁹ However, articles 6, 8 and 109 say simply "let him be punished as is written in the Laws of the Holy Fathers" (*Да се каже како пише оу законико светых отъцъ*),⁷⁰ without precise determination of penalty type.

7 Loss of Honour and Disqualification from Holding an Office

Loss of honour (*ἀτιμία, infamia*) appears in Justinianic law as a penalty for wrong or unseemly conduct, such as not obeying trade regulations, disgraceful behaviour in the army, misconduct in family relations, and certain criminal offences. Infamy (*Ehrlosigkeit* in German law) as a penalty had a great importance in German mediaeval law, and among Slavonic laws in Poland. It was genetically connected with breach of the peace (*Friedlosigkeit*)—disorderly and dangerous conduct disruptive of public peace. Breach of the peace is a generic term, and includes all violations of public peace or order and acts tending to a disturbance thereof. A violation of public tranquility was usually punished by loss of honour and exile (*bannitio*).

In Serbian mediaeval law we can find only two cases which provided loss of honour. First, article 154 of Dušan's Law Code, entitled "Of jurymen" (*о поротницих*), runs as follows: "When jurors acquit on oath according to the law, and after acquittal guilt be proved against him whom they have acquitted ... and in future those jurors shall not be believed" (*Кои се поротници кљунд и отпрашаваши по закону, и ако се по тојзи отпрашаваши поличе избрите истинно оу отпрашаваши поличе когдано је отправила порота ... а веће потом да несде тврзин поротници вѣровани*).⁷¹ As article 160 calls jurors "trusty men" (*да јесте порота вѣровани чловѣци*), the words "those jurors shall not be believed" from article 154 undoubtedly mean loss of honour. The second case concerns a lord who abused a right of maintenance (article 57): "And if any lord be on maintenance and do wrong to any man by rancour, waste his land, burn his house, or do any other mischief, his holding shall be taken from him and another shall not

⁶⁹ See Chapter 10, section 6.

⁷⁰ Burr, "The Code of Stephan Dušan", pp. 199, 200 and 518; Novaković, *Zakonik*, pp. 11, 13 and 84; *Zakonik cara Stefana Dušana*, vol. III, pp. 100 and 128.

⁷¹ Burr, "The Code of Stephan Dušan", p. 528; Novaković, *Zakonik*, pp. 120–121; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

be given to him" (Кој је властѣлинъ на прѣселице; комѣ пизмомъ које зло Ѹчини земли пленомъ, и којуко пожеже, или које любо зло Ѹчини; такози тази дрѣжава да мѣ се оузме, а ина да не дастъ).⁷² "It was customary for the Tsar to send his nobles on official duty to regions remote from their estates and to issue authority to them to demand board, lodging and transport from the inhabitants."⁷³ If he abuses his rights he shall be deprived from his manor, but he shall lose the honour to get another holding estate, as well. Supplementary to article 57 is the clause of article 142, which orders: "Any lord, greater or less, to whom I have given land and towns, if any of them be found to have seized villages and people against the law of my Empire which I have enacted in my Council, let his estate be taken from him" (Властѣлам и властѣличинсъм коимъ юсть даљ царство ми землю и градовѣ; ако се кто ѡд ныхъ ѿбрѣте апленивъ селъ и людїи и затръвъ прѣзаконъ царства ми цо юсть царство ми оузаконило на съборѣ; да моу се оузмѣ дрѣжава).⁷⁴ But this provision deals with cases where noblemen were appointed to administer newly acquired territories.

Several articles of the Law Code of Stefan Dušan mention disqualification from holding an office as a penalty. According to article 32, stewards of Church manors, who wilfully drive Church labourers and shepherds away, "let their land and people be taken from them" (и да имъ се оузме земља и людїе). Article 20 forbids a priest from attending the taking out of bodies of graves for magic: "and if any priest shall come to it, let his priesthood be taken from him" (ако ли боудѣ попъ на този дошъль да мѣ се оузме поповѣтво). Article 28 orders: "And in all churches the poor shall be fed as is written by their founders; and should any one fail to feed them, be he Metropolitan, bishop or hegoumenos, he shall be deprived of his office" (И по вѣсѣхъ црквахъ да се храни оубозїи, како юесть оуписано ѿт ктиторъ; ктот ли не оусхрани ѡдъ митрополитъ, и ѿт епископъ, или ѿт игѹменъ, да се ѿтлоучи сана). According to the Athos manuscript, article 13 says that Metropolitans, bishops and hegoumenos who were appointed by bribery shall be deprived of their office, as well as the persons who were appointed by them (И митрополитѣ ѹ епискоупи, игѹмени по митѣ да се не поставе ... и ако се наидѣ кои любо по митѣ став, да изврѣжетъ се ѿба ѿт сана, и поставиви, и поставајен'ни).⁷⁵

⁷² Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, pp. 48–49; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

⁷³ Burr, "The Code of Stephan Dušan", p. 209 (comment on article 57).

⁷⁴ Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, vol. III, pp. 138, 140.

⁷⁵ Burr, "The Code of Stephan Dušan", pp. 204, 202, 203; Novaković, *Zakonik*, pp. 30, 23, 27, 17; *Zakonik cara Stefana Dušana*, vol. III, pp. 106, 104; vol. I, pp. 166, 168.

Disqualification from holding an office, expressed by the formula “let him be deprived of his office”, can be found in Saint George’s charter as well, where we read: “If the hegoumenos be found to misjudge, let him be deprived of his office” (*Лице ли се наиде игоуменъ кривъ соудивъ, да избръжетъ се сана*).⁷⁶

8 The Right of Asylum (Greek ἄσυλον, ἄσυλία, Latin *asylum* or *refugium* = Shelter, Refuge)

The right of asylum is in Greek ἄσυλον, ἄσυλία, and in Latin *asylum* or *refugium* = shelter, refuge. Asylum (from Greek α = privative and $\sigmaύλη$ = right of seizure) is a sanctuary or inviolable place of protection, such as a church, where criminals and debtors sheltered themselves from capture and punishment, and from which they could not be forcibly taken without sacrilege. Temples and altars were anciently considered asylums, as were tombs, statues of the gods, and monuments.

In all Christian mediaeval States, churches had the right of asylum for culprits. Byzantine law, starting from Justinian’s epoch, contains provisions on asylum in churches,⁷⁷ and they became well known in mediaeval Serbia from the translation of the *Procheiron*. Matheas Blastares in his *Syntagma* created Chapter E-13 under the title “On refugees in a Church” (*Περὶ τῶν ἐν Ἑκκλησίᾳ προσφύγων, Οἱκεῖ καὶ ἡράκλινοι πριετέροις*).⁷⁸ The majority of laws were taken from the *Basilika* and some from the *Procheiron*.

- “It is not allowed to expel a refugee from the Holy Church; if someone dare to do that, let his priesthood be taken from him for the sin of sacrilege” (*τοὺς δὲ τοῦτο τολμήσαντος, τῷ τῆς ἱεροσυλίας ἐγχλήματι ὑποβάλλεσθαι, οἰκεῖ καὶ στενῶν πριετέροις*).
- “Anyone who wilfully drives away a person who found a shelter in the Holy Church shall be flogged and cropped and banished” (*τυπτόμενος καὶ κουρεύομενος ἐξοριζέσθω, βινεαίμης καὶ οστριζαίμης δα χατακαίεται*).⁷⁹
- To an armed slave (*μεθ' ὅπλων ὁ οἰκέτης, σε ορούχιαί με ράβε*) asylum would not be offered; he would be expelled, and if he resisted he would be forced

⁷⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

⁷⁷ For example see *Ecloga xvii*, 1, ed. Burgmann, p. 226.

⁷⁸ Ed. Ralles and Potles, p. 263; ed. Novaković, p. 277.

⁷⁹ *Procheiron xxix*, 7, which adds that a culprit cannot count on his social status to be pardoned from penalty (*ιδίᾳ χρώμενος αὐθεντίᾳ ἀποσπάσαις, ηα εὐοιε γοσπόδεστρο ηαδτειε σε ικτηργητεί*). Ed. Zepos, vol. II, p. 217; ed. Dučić, p. 398; ed. Petrović, p. 322a.

to leave the place of refuge. If he died in a battle, his master, who killed him, would not be guilty.

- “To murderers, adulterers and abductors (Οὕτε δὲ ἀνδροφόνοις, οὕτε μοιχοῖς οὕτε παρθένων ἀρπαξί, Νι же монжесуициамъ, ни прѣлюбодѣемъ, ни же дѣвице похищт’никомъ) a sanctuary does not offer protection. They shall be driven away from the church and punished. Because a law offers protection to the persons who suffer, not to those who do injustice.”
- “Nobody who found shelter in a church can be kidnapped by force (Μηδεὶς τὸν ἐπ' Ἐκκλησίαω προσφεύγοντα βίᾳ ἀφαιρείσθω, Ниистоже иже въ црквь при-
бѣгнштаго нонуждено да откемлјет). On the culpability of the refugee a priest has to be informed (ἀλλὰ τὴν αἰτίαν τοῦ πρόσφυγος δήλην ποιείτω τῷ ἡρεῖ, нь вину прибѣгльца ізвлениу да творить свештен’никоу), and with his consent the refugee’s guilt shall be examined, according to the law.”
- “If someone dared to seize by the hands a refugee and force him away from the Church, he shall be flogged with 12 strokes” (Εἰ δέ τις δοκιμάσει χειρὶ ἀπὸ τῆς Ἐκκλησίας ἀποσπάσαι τὸν πρόσφυγα, ὁ τοιοῦτος δώδεκα ἀλλακτὰ λαμβα-
νέτω, Аште ли кто покоусить се рукою оть црквь оттрыгнути прибѣгльца,
таковии дванадесетъ жъзлоуударенїи да прїиметь).
- “It is necessary that competent judges try refugees, and the Church shall not call their adversaries” (Δεῖ δὲ παρὰ τοῖς προσφόροις δικάζεσθαι δικασταῖς τοὺς πρόσφυγας, καὶ οὐχὶ παρὰ τῇ Ἐκκλησίᾳ τοὺς ἀντιδίκους αὐτῶν μετακαλεῖσθαι,
Подобаєть же оть прикладныихъ съ сеноу соудимомъ быти соудии прибѣгль-
цемъ, а не оть црквь оупрѣ’никомъ ихъ призвати се).⁸⁰

Dušan's Law Code provides the right of asylum in two articles. Article 112, entitled “On escape from prisons” (Ѡ outhечени тъмничномъ), orders: “If any man escape from prison, so soon as he come to my court, be he my man or a man of the Church or of a lord, forthwith let him be free” (Кои чловѣкъ outhече ис тъмнице, с чимъ прїидѣ на дворъ царства ми, или юсть чловѣкъ царства ми, или црковны, или властѣа’скы, с тем’зи да юсть свободынъ). Article 113, with a title “On prisoners” (Ѡ соужниe), says: “And any prisoner kept in my court, if he escape to the court of the Patriarch, let him be free, and similarly if to the court of the Tsar, let him be free” (Кои се сѣжынъ држїи оу дворѣ царства ми, тере outhече на дворъ патрїар’шъ да юсть свободынъ, и такожде на дворъ царевъ да юсть свободынъ).⁸¹

This version of the right of asylum (Tsar's and Patriarch's court) is framed on more generous terms than in Byzantium, where an exception was made for

80 Ed. Ralles and Potles, pp. 262–265; ed. Novaković, pp. 277–278. Cf. *Basilika v, 1, 11–14*.

81 Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, pp. 86–87; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

heretics, heathens, slaves, murderers, adulterers and traitors. Dušan excludes only *otrok* (article 72).⁸²

The Ravanitza manuscript, dating from the last quarter of the 17th century, includes a legal text—the so-called “Law of Emperor Constantine Justinian” (Благоустројства и христолюбиваго цара великаго Константина Иоанниана законъ).⁸³ The right of asylum is defined in article 46 ordering that nobody may wilfully, “with his own hand” (или ръко възложити на), seize a refugee, even the Tsar’s servants (ни сами слѣд га превеъ). If someone dare do that, he shall be beaten with sticks and punished with the penalty provided for the individual seeking refuge (да биетсѧ палицами и да подлежитъ въсѣ винъ бежециаго).⁸⁴

9 Acts of Grace

The Byzantine Emperor is “the guardian of laws” (φύλαξ τῶν νομῶν),⁸⁵ a lawful ruler, and “the task of the Tsar is to do good, for which he is called a benefactor”⁸⁶ That was the reason why the Tsar had the power to grant a pardon, a reprieve, an abolition and an amnesty. The right of asylum was connected with pardon—an executive action that mitigates or sets aside punishment for a crime. A culprit who found shelter in a church had to await a so-called “letter of pardon” (κηῆγδι μιλοστнδ, λόγος ἀπάθειας, *littera gracialis*) from the Tsar.

Pardon and reprieve was prescribed in Chapter II-14 of the *Syntagma* of Matheas Blastares under the title “On punishments” (Περὶ ποινῶν, Ο καζнхъ). “Capital punishment shall be executed with a delay of 30 days, because it is possible that in the meantime the Tsar grants a reprieve to the culprit” (Ἐὰν ἐπαγάγῃ δὲ βασιλεὺς τιμωρίαν τινί, μὴ κολαζέσθω παραχρῆμα δὲ καταδικασθεῖς, ἀλλ’ ὑπερτιθέσθω λ. ἡμέρας δὲ κατ’ αὐτοῦ τιμωρίαν ἵσως γὰρ τεύξεται φιλανθρωπίας, Λιψ

⁸² See Chapter 5, section 3.2.

⁸³ *Zakonik cara Stefana Dušana*, vol. III, p. 341.

⁸⁴ Andreev and Cront, *La loi de Jugement*, p. 53. Cf. B. Marković, “Pravo azila u vizantijsko-srpskoj pravnoj kompilaciji Zakonu cara Konstantina Justinijana” [“The Right of Asylum in the Compilation of Byzantine-Serbian Law of Emperor Constantine Justinian”], ič 53 (2006), pp. 9–22, especially pp. 15–16.

⁸⁵ In the Byzantine Empire there existed also the office of νομοφύλαξ, literally “the guardian of law” (законоподържатель in Serbian translation). It was created in 1043 by Emperor Constantine IX as president of the Law School in Constantinople. The office quickly changed character after its creation and became a position between the State and Church administration.

⁸⁶ See Chapter 8, section 3.

НАНЕСЕТЬ ЦАРЬ ТОМАЮЕ КОМОУ, ДА НЕ ТОМИМЬ ВОУ ДЕТЬ АБІЕ ОСОУЖДЕНЬ БЫВІИ, НЬ ДА ПОЖДАВАЮТЬ СЕ .Л.-ТЕ ДЪНІИ ІЕЖЕ О НІЕМЬ ТОМЛЮЕ; НЕКЛА ПОЛОУЧИТЬ ЧЛОВѢКО-ЛЮБІДА).⁸⁷

Abolition (from the Latin word *abolere* = to destroy utterly), the destruction, annihilation, abrogation, or extinguishment of anything is used nearly synonymously with pardon, remission and grace. In Byzantine law it was applied for culprits in Church asylum. Any of them could get a “letter of pardon” from the Emperor and would have to suffer a spiritual sentence for his sin.

Amnesty is a sovereign act of forgiveness for past acts, granted by a Tsar to all persons or to certain classes of persons who have been guilty of a crime. Concerning amnesty, the *Syntagma* of Matheas Blastares has the following provision: “On the first day of Easter, even if there is no Emperor’s order on that, all prisoners that are in dungeons shall be released, except blasphemers, adulterers, abductors, plunderers of graves, sorcerers, herbalists, murdererers and patricides or anyone who hatches a plot against the Emperor or the City” (Τῇ πρώτῃ τῶν πασχαλίων ἡμερῶν, καὶ βασιλικῆς ἐπὶ τούτῳ μὴ καταλαβούσης κελεύσεως, πάντες οἱ ἐν φυλακαῖς ἀπολυέσθωσθαν, εἰ μὴ ἄφα ἱερόσυλός ἐστιν, ἢ μοιχός, ἢ παρθένων ἄρπαξ, ἢ τυμβωρύχος, ἢ γύρης, ἢ φαρμακός, ἢ φονεὺς, ἢ πατροχτόνος, ἢ κατὰ βασιλέως ἢ πόλεως εὐρέθη μηχανησάμενος, Βъ пръвїи отъ пасхалїе дъни, и царскомуоу о семъ не стигшоу повелїю, в’си иже въ тъмницахъ да поуштаютъ се, развѣ аште оубо свещенотатъцъ иестъ или прѣлюбодѣи или дѣвици-хыщникъ, или гроборитель, или обавникъ, или чародѣи, или доушегоубъцъ, или отцеубителъ, или на цара или на градъ обрещтеть се къз’нъствовавъ).⁸⁸ So, amnesty was granted for all criminals who had committed misdemeanours—less serious crimes. The origin of this clause is unclear.

Article 115 of Dušan’s Law Code, entitled “On absconders” (Џ побѣг’ствѣ), is concerned with amnesty: “If any man receive another from another estate who shall have fled from his own lord or court, if he produce the Tsar’s letter of pardon, it shall not be contradicted. But if he show no pardon, let him be sent back” (И кто и есть чьєга чловѣка прїель ис тоуждє землје, а ѿнъ је побѣгъль ѿтъ своега господара ѿтъ соуда ако дада книгѹ милостию царевѹ да се не потвори; ако ли нѣ дастъ милости да моусе врати).⁸⁹

A similar provision is contained in Despot Stefan Lazarević’s charter from 1406, presented to the monasteries Tismany and Voditsa (today in Romania), where we read:

87 Ed. Ralles and Potles, p. 432; ed. Novaković, p. 457. Cf. *Basilika*, LX, 51, 57.

88 Ed. Ralles and Potles, p. 428; ed. Novaković, p. 453.

89 Burr, “The Code of Stephan Dušan”, p. 519; Novaković, *Zakonik*, p. 88; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

And if any man fled from my land in Hungarian land or in Bulgarian land, be it my man or my nobleman's man, if he spent there three, two or one year, and wanted to come back in previous church villages—let him be free to come back; excepted are those persons who have committed the following crimes: if he did something wrong to me, if he stole from one of my noblemen, if he was a murderer, if he has committed larceny of the Church's objects, if he was a purchased slave, if he was abductor—those shall not be free.

Аще кто побѣгне ут землиѣ Царства ми, оу Оугрьской земли, или оу Бѣлградской, или мои чловѣк, или моего властелина, прѣбывиѣ тамо три лѣта, или дѣвѣ, или єдино, и въсходиѣть възвратити се оу прѣдеченнаа села црквилаа, свободни да есть да прѣидетъ. Тычию кромѣ винъ сихъ; аще бѣдеть Царствѣ ми цио испакостиль, или бѣде властелина моего покраль, или бѣдеть оубица, или свещенникрад'ци, или е рогъ кѣплень на имѣній, или дѣвицопохицитель; таковыи свободада да не даваетъ се по писан'ныи.⁹⁰

However, according to this charter only monasteries could grant the amnesty.⁹¹

90 Ed. Mladenović, *Povelje i pisma despota Stefana*, p. 352.

91 On punishments in Serbian mediaeval law, see Taranovski, *Istorija*, vol. II, pp. 37–79; Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 461–469; Janković, *Istorija države i prava feudalne Srbije*, pp. 93–95; Troyanos and Šarkić, “Ο κώδικας του Στέφανου Δουσάν και το βυζαντινό δίκαιο”; Šarkić, *Srednjovekovno srpsko pravo*, pp. 108–110; and S. Šarkić, “Kazne”, in LSSV, pp. 269–270. On penalties in Byzantine law, see S. Troianos, “Die Strafen im byzantinischen Recht. Eine Übersicht”, *Jahrbuch der Österreichischen Byzantinistik* 42 (1992), pp. 55–74.

Crimes Against the State and Sovereign

1 Treason

Treason is a breach of allegiance to one's government, usually committed through levying war against such government or by giving aid or comfort to the enemy. Under English common law acts against the King were called "high treason",¹ while in Serbian mediaeval law the term to denote any crime affecting the King's (Tsar's) person or dignity was *nevera* (небеђа, ἀπιστία).² In modern Serbian the word *nevera* mostly means "disloyalty", "infidelity", "faithlessness", and for "treason" and "high treason" the terms *izdaja* (издаја) and *veleizdaja* (велеиздаја) are in use.

Legal acts promulgated before Dušan's Law Code clearly show that high treason was in the sphere of the King's Court of Justice.³ King Milutin's charter to the family Žaretić from the city of Bar (1316) and Tsar Dušan's charter to the lesser lord Ivanko Probištitović (1350) testify that the sovereigns could deprive their noblemen of their manors only in a case of high treason (догде се већни краљевством ми; да због једине небеђе).⁴ The examples of noblemen Vericha and

¹ The matter was therefore raised in Parliament with a result that the famous Statute of Treason in 1352 (Edward III, st. 5, c. 2) laid down a definition, coupled with a proviso that any further definitions in doubtful cases shall be made in Parliament. The *Statute* has high treason consisting in:

compassing or imagining the death of the King, his consort, or his eldest son; violating his consort, or eldest unmarried daughter, or the wife of his eldest son; levying war against the King in his realm, or adhering to his enemies in his realm, giving them aid and comfort in the realm or elsewhere; forging the great seal or the coinage, and knowingly importing or uttering false coin; slaying the treasurer, chancellor or judges while sitting in court.

High treason was never clergyable, and more than one prelate has paid the penalty. In English law "high treason" has to be distinguished from "another sort of treason", which was generally called *petit* or *petty treason*, as being: the slaying of a master by his servant; the slaying of a husband by his wife; the slaying of a prelate by his subject, secular or religious. See Th.F.T. Plucknett, *A Concise History of the Common Law* (Indianapolis IN 2010), pp. 443–444.

² The word was in use in old Czech law as well—*nevéra*.

³ See King Stefan Dragutin's chrysobull presented to the monastery of Hilandar (1276–1281) and King Milutin's treaty with Dubrovnik (14 September 1302). Edited by Mošin, Ćirković, and Sindik, *Zbornik*, pp. 268 and 346. The "King's Court" mentioned in the text is similar to the "Court of King's (or Queen's) Bench", in English law, the supreme court of common law in the Kingdom.

⁴ SSA 6 (2007), p. 12 and SSA 8 (2009), p. 74.

Iritza show that they lost their estates committing the crime of high treason.⁵ Several articles of Dušan's Law Code (52, 140, 144, 161 and 192) mention *nevera* but without specifying a penalty. This could be explained by the fact that the *Syntagma* of Matheas Blastares contains a great number of provisions concerning high treason.

Roman law prescribed capital punishment with a confiscation of property for treason and high treason.⁶ Close to high treason was *crimen laesae maiestatis* (καθοσίωσις)—the crime of *lese-majesty*, or injuring the Imperial majesty.⁷ According to Justinian's *Institutes*,⁸ *crimen laesae maiestatis omnia alia crimina excedit quoad poenam*, i.e. “the crime of *lese-majesty* exceeds all other crimes in its punishment”. Provisions of Roman law on treason were taken by the *Ecloga*⁹ and *Procheiron*.¹⁰ Using those rules Matheas Blastares created two chapters: Π-21, under the title “On traitors” (Περὶ προδότῶν, Ο πρεδατεληχ),¹¹ and Σ-11, entitled “On those who found a secret alliance or hatched a plot or prepared an uprising” (Περὶ τῶν συνωμοσίας, ἡ φατρίας, ἡ στάσεις ποιούντων, Ο ικέ οικλιναοψιχς σε μεζδογ σοβοι ήλι κουμβανίε ήλι κραμολογ τβορεψιχ).¹²

5 See Chapter 18, section 4.

6 *Cod. Iust.* ix, 8, 5, a law promulgated in the name of Emperors Arcadius and Honorius (a. 397).

7 *Cod. Iust.* ix, 7, 1, *Si quis imperatori maledixerit*, a law promulgated by Emperors Theodosius, Arcadius and Honorius (a. 393).

8 *Iust. Inst.* iv, 18, 3, *De publicis iudicis.*

9 xvii, 3, ed. Burgmann, p. 226. “The *Ecloga* determined that the verdict should not be issued immediately, even though it would be appropriate in the case of high treason, to avoid injustices being done or to prevent high treason from becoming a weapon of slander by the enemies of the accused, allegedly turned against the Emperor. For this reason, it was necessary above all to guard the arrested person well, and then to report the actions for which he is charged to the Emperor, who will interrogate the accused himself and then decide. Consequently, the legislation imposes a specific course: arrest, imprisonment, report of acts to the Emperor, interrogation, trial and verdict by the Emperor himself.” C.A. Bourdara, “Procedural Matters Concerning the *Crimen Laesae Maiestatis* (Crime of High Treason) in Mid-Byzantine Period”, *NOMOPHYLAX, Collection of Papers in Honor of Srđan Šarkić*, ed. T. Ilić and M. Božić (Belgrade 2020), p. 94.

10 xxxix, 1, 3, 9, 10, 17, 19, 38, ed. Zepos, vol. II, pp. 216–220. Cf. Bourdara, “Procedural Matters Concerning the *Crimen Laesae Maiestatis* (Crime of High Treason) in Mid-Byzantine Period”, pp. 93–100.

11 Ed. Ralles and Potles, pp. 442–443; ed. Novaković, pp. 467–468.

12 Ed. Ralles and Potles, pp. 449–450; ed. Novaković, pp. 476–477. It is interesting that the Serbian translator for the Greek word φατρία (plot) used the Latin (Italian) term *коумбанија* (*compagnia*). Cf. *The Statute of Dubrovnik* II, 1, B (*Et omnes compagnias, et sacramenta facta et facienda, et reitates disturbabo*) and VI, 11 (*Qui fecerit compagniam per sacramentum vel per promissionem*). Ed. Šoljić, Sundrica, and Veselić, pp. 124 and 324.

Chapter Π-21 starts with the ninth rule of Gregory Thaumaturgus, or Gregory the Miracle-Worker, a Christian bishop of the third century (Γρηγορίου τοῦ Θαυματουργοῦ θ', Δεβετοε πραβио светаго Григорија чудотворца), which says that those persons who were captured by barbarians and had later forgotten that they had been Christians, and had killed some of their fellow tribesmen (ἐνίους τῶν ὁμοφύλων, ήτεκсыи отъ юдиномлемен'ныхъ) had to be expelled from the community of believers (καὶ τῆς ἀκροάσεως ἐκβληθήτωσαν, и послюшаніа да изгнани буздоутъ) until the Holy Fathers, and before them the Holy Spirit, decide what will happen with them.

In the next lines we read four secular laws, taken from the *Procheiron*:

- a) “He who keeps encouraging a warrior or betrays a Roman citizen to an enemy shall be punished by the death penalty” (Ο ἐρεθίζων πολεμίους, ἢ προδιδοὺς Ῥωμαίους, хефалижъс тимареити, Повоштреи ратники или прѣдати ратникомъ православна, глаавнѣ да томить се).¹³
- b) “All those Romans (Orthodox) who have deserted to the enemy should be killed like enemies” (Τοὺς ἐκ τῶν Ῥωμαῖκῶν πρὸς τοὺς πολεμίους ἀποφέυφοντας, ὡς πολεμίους ἔξεστιν ἀκινδύνως φονεύειν, Иж отъ православныиихъ къ ратникомъ отвѣгшихъ, иако ратники лѣтъ есть везгѣднѣ оубивати).¹⁴
- c) “He who hatches a plot against the Emperor’s life or against the State shall be killed and his property confiscated by the State” (Ο κατὰ τῆς σωτηρίας τοῦ βασιλέως ἢ τῆς πολιτείας μηχανησάμενος, ἢ μελετήσας, φονεύεται καὶ δημεύεται, Иже на спасенїе царево или градданство къзниствовавъ, или пооуѓиње се, оубивајети се и разграблатијети се).¹⁵
- d) “Those who willingly run away to the enemy and inform them on our decisions shall be punished by suffocation or by stake” (Οἱ πρὸς πολεμίους αὐτομολοῦντες, καὶ τὰς ἡμετέρας βουλὰς ἀπαγγέλλοντες, ἀπαγχονίζονται, Иже къ ратникомъ сами вѣжеште и наше съвѣти възвѣштаюште, оудавлѧијоти се или съжижајоти).¹⁶

¹³ Ed. Ralles and Potles, p. 442; ed. Novaković, p. 468. Cf. *Procheiron*, XXXIX, 1. On every place where the Greek text speaks on Ῥωμαῖοι (Romans, i.e. Byzantines), the Serbian translator used the word православни (Orthodox).

¹⁴ Ed. Ralles and Potles, p. 442; ed. Novaković, p. 468. Cf. *Procheiron*, XXXIX, 3 = *Digesta*, XLVII, 8, 3, 6: *Transfugas licet, ubicumque inventi fuerint, quasi hostes interficere* (*Marianus libro quarto institutionum*).

¹⁵ Ed. Ralles and Potles, p. 442; ed. Novaković, p. 468. Cf. *Procheiron*, XXXIX, 10 = *Cod. Iust.* IX, 8, 5.

¹⁶ Ed. Ralles and Potles, p. 443; ed. Novaković, p. 468. Cf. *Procheiron*, XXXIX, 17 = *Digesta*, XLVIII, 19, 38, 1: *Transfugae ad hostes vel consiliorum nostrorum renuntiatores aut vivi exuruntur aut furcae suspenduntur* (*Paulus, libro quinto sententiarum*).

Chapter Σ (C) - 11 starts with the 18th canon of the Fourth Ecumenical Council (Council of Chalcedon of 451) and the 34th rule of the Sixth Ecumenical Council (Third Council of Constantinople of 680–681): “If the civil laws, as an agreement of the wise men, forbade the foundation of secret alliances and the hatching of plots, the same shall the Church of God do” (Ἐν τοῖς πολιτικοῖς, φασι, νόμοις, ὃν οἱ πλείους πρὸς τῶν ἔξω σοφῶν συνετέθησαν, τὸ τῆς συνωμοσίας ἡ φατρίας ἀπειργται τόλμημα, πολλῷ γε δήπου τῇ τοῦ Θεοῦ Ἐκκλησίᾳ, αὐτῃ γραδικύμι, ρεχε, ЗАКОНИ, отъ нижъже множаниши отъ външниихъ мондрицъ сложиша се, иже съоклиниа ила коумбание отреченно бысть дръзноутїе, много же паче Божието цръковието).¹⁷ In the next lines Matheas Blastares explained the difference between secret alliance, conspiracy and uprising. Secret alliance (συνωμοσία, съоклинание) exists when someone makes an agreement against somebody, and enters into an alliance about that with another person and does not persist from the agreement, until it was realized, as was told by Luke in the Acts of the Apostles: “And when it was day, certain of the Jews banded together, and bound themselves under a curse, saying that they would neither eat nor drink till they had killed Paul.”¹⁸

Conspiracy (φατρία, κογμ'βανіа) is a combination between relatives or two or more other persons formed for the purpose of committing a criminal act. An uprising (τυρεύειν, ковы) exists when someone in a brutal and canny way prepares and attacks somebody.¹⁹

Two laws, taken from the *Basilika* (lx, 36, 4 and 18), order: “He who prepared conspiracy against the State, or calumniated the army or betrayed it to the enemy, or prevented Romans (Orthodox) by slyness from defeating the enemy, or who arranged that the enemy get military aid or money, or anything else—he is guilty of high treason” (Ο συνωμοσίαν κατὰ τῆς πολιτείας παρασκεύάσας γενέσθαι, καὶ ὁ ἐπιβουλεύσας τῷ στρατοπέδῳ, ἢ τοῖς πολεμίοις αὐτὸς προδοὺς, ἢ ὁ κατὰ δόλον ἐμποδίσας ὑπὸ Ῥωμαίους γενέσθαι τοὺς πολεμίους, ἢ παρασκευάσας αὐτοὺς βοηθηθῆναι πλήθει, ἢ δπλοις, ἢ χρήμασιν, ἢ ἐτέρῳ οἰωδήποτε τρόπῳ, τῷ τῆς καθοσιώσεως ὑπόκειται ἐγκλήματι, Иже съоклиниае на гражданство оустроивъ быти, и настававъ воинку, или ратникомъ сию издавъ, или по льсти възъбрачиивъ подъ православними бити ратникомъ, или оустроивъ сихъ помошть приюти множествомъ, или оружјемъ, или иманіемъ, или иныимъ кыимъ любо образомъ, иже неувре подлежить съгражденію).

The law considered that anyone who brought together people without the Emperor's order, deserved to be severely punished (Ἄλλὰ καὶ τὸ συνάγεσθαι ὄχλον

¹⁷ Ed. Ralles and Potles, p. 449; ed. Novaković, p. 476.

¹⁸ Acts of the Apostles, 23, 12.

¹⁹ Ed. Ralles and Potles, p. 449; ed. Novaković, p. 476.

χωρίς βασιλικοῦ ἐπιτάγματος, πολλῆς ἀξιον τιμωρίας κρίνεται πρὸς τῶν νόμων, Νύ ι κέκε σύβιρατι ναρόδι κρομὲν τσαρικαγο πονελτνιά, μνογα δοστονηο τομλενιά σούδιτη σε οτε ζάκον).²⁰

At the end of Chapter C-11, Matheas Blastares added a *Novella* of Emperor Constantine Porphyrogennetos, promulgated with the consent of Patriarch Alexios and the whole Council, pronouncing an anathema upon all those who prepare conspiracies or disorder (ἀναθέματι καθυποβάλλει τοὺς μέλλοντας ἡ ἐπιβουλαῖς ἐπιχειρεῖν, ἡ μούλτω, αναδεμέν πρέδαιεται χοτεστιχή ήτι ναβέτη ναчинати или монг'тар'ство) and upon their accomplices.²¹

In Chapter B-7, entitled "Regarding that the Emperor is not to be disturbed" ("Οτι βασιλέα ύβριζει οὐ δεῖ, Ιλακο ταρογ ηε ποδοβαιετη δοσαγδати), Matheas Blastares wanted to collect all provisions concerning the crime of *lese-majesty*. At the beginning he quoted the 84th rule of Saint Apostles which reads as follows: "Whosoever disturbs the Emperor or Prince without inducement, if he be a cleric, let him be excommunicated, if he be a layman, let him be expelled" ("Οστις ύβριζει βασιλέα, φησιν, ἡ ἄρχοντα παρὰ τὸ δίκαιον, εἰ μὲν κληρικός εἴη, καθαιρείσθω, λαΐκός δὲ, ἀφοριζέσθω, Ικε κτο δοσαδιτη ταρογ, ρεχε, или кнезоу πρέзъ правды, аще оубо приичтникъ боудетъ, да извръжетъ се, людскии же да отлоучитъ се).²² To enforce his arguments Matheas Blastares cited several passages from the Bible. Mosaic Law (*Καὶ ὁ Μωσῆς ἠρέσθω γάρ νόμος, И монгескыи во законъ*) orders: "and the Prince of thy people thou shalt not curse"²³ ("Ἄρχοντα τοῦ λαοῦ σου οὐκ ἐρεῖς κακῶς, Кнезоу людии своиихъ не речешни зла). And Peter, the first leader of the Apostles (ἡ κορυφὴ τῶν Ἀποστόλων, врхъ апостолскыи), said: "Honour the Emperor"²⁴ (Τὸν βασιλέα τιμάτε, Цара почитайте). According to Paul: "I exhort therefore, that, first of all, supplications, prayers, intercessions, and giving of thanks be made for all men; for Emperors, and for all that are in authority"²⁵ (ὑπερεύχεσθαι κελεύει τῶν βασιλέων, καὶ τῶν ἐν ὑπεροχῇ πάντων, καὶ ταῦτα ἀπίστων, молитвы творити о царихъ повелевадиеть, и о всѣхъ иже въ величествѣ, и сїа небѣр'ныихъ).²⁶

Ecclesiastical rules were followed by three laws taken from the *Basilika*. The first law says that whosoever disturbs the Emperor should not be punished immediately, nor he should suffer brutally and vehemently ('Ο τὸν βασιλέα

20 Ed. Ralles and Potles, pp. 449–450; ed. Novaković, pp. 476–477.

21 Ed. Ralles and Potles, p. 450; ed. Novaković, p. 477.

22 Ed. Ralles and Potles, p. 124; ed. Novaković, p. 129.

23 The Book of Exodus, 22, 28.

24 The Second Epistle General of Peter, 2, 17.

25 The First Epistle of Paul the Apostle to Timothy, 2, 1–2.

26 As we can see, Matheas Blastares has omitted the first part of Saint Paul's Epistle, but he added the words "and even for infidels".

ὑβρίζων οὐκ εὐθὺς τιμωρεῖται, οὕτε τι ἄλλο σκληρὸν ἢ τραχὺ ὑπομένει, Ιже цароу досаждае, не аве томимъ юсть, ни же ино что жестоко, или люто постражаетъ), because if he said something from frivolity (<άπὸ κουφότητος, отъ несмыслиства) and he did not think prudently or he was insane—he should be pardoned. The Emperor should be informed about all the facts (<ἀναφέρεται δὲ τὰ περὶ τούτου τῷ βασιλεῖ, оповѣданъно же бывають о семъ цареви), and he shall decide, according to the dignity of the person, whether he shall grant forgiveness or condemn a culprit (<καὶ αὐτὸς ἐξ τῆς ποιότητος τοῦ προσώπου κρίνει, εἰ δὲ φείλει συγχωρηθῆναι ἢ τιμωρηθῆναι, и тъ отъ кауцтва лица соудить, аще должно юсть прощеноу быти или томаен'ноу).²⁷

The second law orders: "Whosoever commits a criminal act of conspiracy, i.e. brings together a troop against the Emperor, shall be executed by sword" ('Ο καθοσίωσιν πλημμελῶν, ἦτοι φατριάζων κατὰ βασιλέως, ξίφει τιμωρεῖσθω, Иже коум'ванією съг҃рѣшаи сирѣзъ съзырае чечоу на цара, мъчимъ да томимъ вондеть').²⁸ By inserting this law in Chapter B-7 Matheas Blastares, who was not a brilliant lawyer, confused the crime of *lese-majesty* with high treason. The essential contents of this law were already exposed in Chapter II-21, using different formulations, but the source was the same—*Procheiron xxxix*, 10.

Finally we have a law which says that everyone who finds a slander against the Emperor written on paper and does not burn it, but starts to read it, shall be punished as the one who brought a slander action (<Πάς ὁ εύρισκων φλυαρίαν κατὰ βασιλέως ἐν χάρτῃ ἐσφραγισμένην ἢ ἀσφράγιστον, καὶ μὴ παραχρῆμα καίων, ἀλλὰ ἀναγινώσκων, ὑποκείσθω τιμωρίᾳ, ἢ τινι, ὑπέκειτο καὶ ὁ συντεθεικὼς τὴν φλυαρίαν, Въсакъ обретаен бледы на цара въ хартии запечатавн'и, и не аве иждизде, не проригдае, да подлежитъ томаен'ю юмоуже бы подлежаль и сложи-вии бледи).²⁹

In the first part of Dušan's Law Code, only article 52 treats high treason (*nevera*), speaking on the collective criminal liability of the household (see above). However, it is in connection with article 51, under the title "Of presenting a son at Court" (Ω πρέδαν'ици сына оу дворъ), although article 51 does not mention the term *nevera*: "And when a man shall present a son or brother at Court, the Tsar shall ask him: "Shall I trust him?" And he shall say: "Trust him as myself." And if he do any evil, let him pay who hath presented him. And if he should serve as others serve in the Tsar's Palace, he shall himself pay if he do wrong" (И кто прѣда сына оу дворъ и оупроси га царь вѣровати ли га кю, и

²⁷ Ed. Ralles and Potles, p. 125; ed. Novaković, p. 129. Cf. *Basilika*, LX, 36, 13 = *Cod. Iust.* IX, 8, 5.

²⁸ Ed. Ralles and Potles, p. 125; ed. Novaković, p. 129. Cf. *Procheiron*, xxxix, 10; *Scholia on Basilika* LX, 36, 19.

²⁹ Ed. Ralles and Potles, p. 125; ed. Novaković, p. 129.

рече вѣрѹи колико и мене, ако юе злo оучини, да плати wh'зїи кои га је прѣдалъ; ако ли такои име доворити каконо дворе оу полат' царев'ш, цо съгруѣши да плати самъ).³⁰ It seems that in the first case, if it were a serious or disgraceful crime, the guarantor would be liable, but if the son or brother commit some venial offence or breach of discipline when serving at Court, he would himself pay the penalty.

Article 52 starts with the wording: "For treason for any case" (*За невѣрѹ вѣсакъ съгруѣшенїе*).³¹ So, articles 51 and 52 treat two essential elements of feudal public law: trust (*vera*) and treason (*nevera*). Breach of trust as any act done by a trustee contrary to the terms of his trust in Serbian mediaeval law meant a kind of treason. In Serbian it was clearly expressed by the antonyms *vera* and *nevera*.

For several crimes we find the formula "let him be punished as a traitor" (*да се каже како и невѣрникъ*), but without specifying a type of punishment. For example, in King Dragutin's charter presented to the monastery of Hilandar (1276–1281), we read: "Whosoever steals on the market-town using force ... let my lordship punish him as a traitor" (*И на семь тѣрьгоу кто се вѣртє оужемъ по силѣ ... а господѣствоује да го кажет яко и невѣрника*).³² Article 140 of Dušan's Law Code commands: "No man may receive any man, neither ... And if he receive him, let him be punished as a traitor" (*Никто ничиєга чловѣка да не прима ... ако ли га кто прими такози да се каже кто любо како и невѣрникъ*). Article 144 contains a similar provision: "If any lord, great or small, or any other man of my Empire be found as fugitive, and the neighbouring village and the county around arise and plunder his home and cattle which he has left, those who do so shall be punished as traitors to my Empire" (*Ако ли се вѣртє властѣльниь, или властѣличись побѣглъць и инь кто любо царьства ми, тете оустаноу на грабленїе школ'ниа села, и жоупа на неговъ коукю и на єговъ добитъкъ цо боудѣ штавиль, шнизи кои този оучине да се каждъ како невѣрници и царьства ми*).³³ Tsar Dušan's charter, fixing the boundaries of Hilandar's Mount Kunari (1349–1353), says: "Whosoever of the abovementioned persons does not respect [this charter] let him be scattered³⁴ and punished, according to the Law Code, as a

³⁰ Burr, "The Code of Stephan Dušan", p. 208; Novaković, *Zakonik*, p. 44; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

³¹ Burr, "The Code of Stephan Dušan", p. 208; Novaković, *Zakonik*, p. 45; *Zakonik cara Stefana Dušana*, p. 112.

³² Mošin, Ćirković, and Sindik, *Zbornik*, p. 269.

³³ Burr, "The Code of Stephan Dušan", pp. 525 and 526; Novaković, *Zakonik*, pp. 108 and 111; *Zakonik cara Stefana Dušana*, vol. III, pp. 138 and 140.

³⁴ The punishment of "scattering" (*da se raspe*): when applied to a village, scattering (*rasuti*)

traitor" (Тко ли потвори ѡдь сихъ више писанихъ мало или много, да се распе и накаже по Законникѹ како и невѣрникъ).³⁵

Similar to the term *nevernik* (traitor) is *prebeglac* (прѣбеглацъ) = deserter, mentioned in article 142 of the Code: any lord, who has seized villages and people (ако се кто ѡдь ныхъ ѿбрѣте ѿпленивъ села и людѣи), shall be punished as a deserter (да се каже како и прѣбеглацъ).³⁶ As article 144 treats a fugitive lord (побѣглъ) as a traitor, we can conclude that the expressions *nevernik* and *prebeglac* in the text of the Code mean the same thing—a traitor.

2 Disobedience to the Sovereign's Orders

The Serbian monarch had granted very extensive privileges to the Church and to the nobles, but he wanted to assert his paramount authority over all. For this reason in legal acts we find the wording "whosoever disobeys my order", or "my Imperial writ may not be disobeyed". A person who disobeys the sovereign's order was called *preslušnik* (прѣслоушникъ) = disobedient, and the verb "to disobey" is *preslušati* (прѣлоушати).³⁷ For example, at the end of the charter of King Vladislav presented to the monastery of Saint Nicholas on the island of Vranjina (1241–1242), we read: "Whosoever be found to disobey my order, and perform act of malice, either to the land or to the people, let him receive my wrath and be punished by me the King, and let him pay 300 perpers" (Кто ли се ѿбрѣте прѣслоушавъ си е моє, испакости чго въ земли или въ людехъ, да приме гнѣвъ и наказаніе штъ кралевъства ми, и да да кралевъствоу ми. Т. перь-перь).³⁸ King Milutin, granting privileges to Ragusan merchants (1302), *inter alia*, orders: "Whosoever disobeys my royal writ, let him receive wrath and punishment from me the King, and let him pay to me 500 perpers" (Тко ли прѣлоуша писание кралевъства ми, да приме гнѣвъ и наказаніе отъ кралевъства ми, и да плати кралевъствоу ми .е. суть перьперь).³⁹ But, in King Stefan Uroš's treaty with Dubrovnik (13 August 1252), for disobedience to the sover-

meant the dispersal of people, the burning of their houses and forfeiture of their property; when applied to individuals, only to the latter.

35 Edited by I. Komatinia, *SSA* 13 (2014), p. 210. Tsar Dušan's charter refers to the Law Code, but adds "scattering" as a supplementary punishment, which the Law Code does not contain.

36 Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

37 In modern Serbian we use the words *neposlušan* and *ne poslušati*.

38 Mošin, Ćirković, and Sindik, *Zbornik*, p. 163.

39 Novaković, *Zakonski spomenici*, p. 160, para. IV.

eign's order we find only the King's threat: "Whosoever be found to disobey my royal order, let him be punished by my wrath and my royal penalty" (*Кто ли се върбите преслѣшавъ повѣление кралевѣства ми, да се накаже гневом и наказаниемъ кралевѣства ми*).⁴⁰ Pecuniary punishment (fine in money), as in the two previous cases, was not prescribed.

Disobedience to the Tsar's orders is treated in article 136 of Dušan's Law Code: "My imperial writ may not be disobeyed, to whomsoever it be sent, be it to the Lady Tsaritsa, or to the King, or to the lords, great or small, or to any man. No man shall disobey what is written in my writ. But if such a writ cannot be fulfilled, then let him who received it go forthwith back with the writ to me to explain to me" (*Книга царства ми да се не преслѣща гдѣ приходи, или къ господи царици, или къ кралю, или къ властѣломъ великыемъ и малымъ и въсакомъ чловѣкѣ; никто да не прѣчоє цо пише книга царства ми; ако ли боудѣ таковazzi книга цо не може вѣн'зи съврьшити, вола не има да дастъ тѣи часъ, да гредѣ впеть с книгомъ, къ царству ми да вѣзовѣ царству ми*).⁴¹ In close connection with article 136 are articles 129, 148 and 178. Article 129 orders: "In every army the commanders have authority even as the Tsar himself. What they say, let it be obeyed. If any man disobeys them in anything, he shall be tried even as though he had disobeyed the Tsar" (*На воинцѣ на въсакон да вѣладаю воеводѣ, колико и царь. цо речѣ да се чюе; ако ли ихъ кто прѣчоје оу чемъ; да юсть този всоужденїе кое и внем'зїи кои бы цара преслоушали*).⁴² According to article 148, "whosoever disobeys the writ of my judges ... they shall be punished as disobedient to my majesty" (*тере преслоушаша книгѣ соудїа царства ми ... тызїи вѣси да се всоудѣ тако и преслоушници царства ми*).⁴³ Finally, article 178 prescribes that authorities that do not execute judges' writs. should be punished even as disobedient ones (*аще ли не съврьше власти, да се кажѣ како преслоушници*).⁴⁴

It is evident that article 136, which insists on the obedience of "any man" (и въсакомоу чловѣку), including Lady Tsaritsa and Crown Prince, did not provide a criminal penalty for disobedience to the sovereign's orders. The Code

⁴⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 188.

⁴¹ Burr, "The Code of Stephan Dušan", p. 524; Novaković, *Zakonik*, p. 103; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

⁴² Burr, "The Code of Stephan Dušan", p. 522; Novaković, *Zakonik*, p. 98; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

⁴³ Burr, "The Code of Stephan Dušan", p. 526; Novaković, *Zakonik*, p. 115; *Zakonik cara Stefana Dušana*, vol. III, pp. 140–142.

⁴⁴ Burr, "The Code of Stephan Dušan", p. 534; Novaković, *Zakonik*, pp. 138–139; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

envisages only the case if a writ cannot be fulfilled; then a Tsar's messenger shall go to the Emperor with the writ to explain to him. Regarding what could happen after that, we have no information in the text of the Law Code. According to hypothesis of Teodor Taranovski, three possibilities existed, according to the circumstances: 1) the order could be repeated; 2) the writ could be abolished; or 3) the writ could be changed.⁴⁵

However, in feudal society it was not strange that mighty lords and the sovereign's closest relatives would disobey the King's or Tsar's writs. Aleksandar Solovjev quotes two examples within the family of Tsar Dušan.⁴⁶

Tsar Dušan appointed his brother-in-law Despot John Komnenos (Κομνηνός) as a lord of the greater part of Albania. On the Adriatic coast, close to the city of Avlona (Greek Αυλώνας, Italian *Valona*, modern *Vlorë* in Albania), Despot John plundered an aground Venetian boat (*inter cetera requisivit de certo damno dato in quadam navi veneto in partibus Avalone per cognatum domini imperatoris*), referring to the *ius naufragii*,⁴⁷ although this custom was explicitly abolished in Tsar Dušan's treaty with Dubrovnik from 20 September 1349 (И ци се разъбие древо венетъчко и дъбровъчко, ци ѳтече Ѹ землю царъства ми и кралевъ, да се не Ѹзме ници, да ѹсть свободно).⁴⁸ As the Venetian ambassador⁴⁹ took a complaint to the Tsar, Dušan promised to compensate the damaged property. According to the letter of the Venetian ambassador, Tsar Dušan sent a writ to his brother-in-law, ordering him to compensate the damage, but the Tsar's cousin did not undertake anything. It hurt the Tsar, but he could not do anything, for his love of the Tsaritsa (*Et dominus imperator misit predicto suo cognato ... et si reperiretur venetum esse damnificatum, faceret omnia integraliter emendari. Ipse vero cognatus domini imperatoris non misit, de quo dominus imperator molestum habuit, sed propter amorem domine imperatricis aliud dicere non potest*).⁵⁰ Finally, on 13 April 1350, the Tsar per-

⁴⁵ Taranovski, *Istorija*, vol. I, p. 154.

⁴⁶ Solovjev, *Zakonik cara Stefana Dušana*, p. 287.

⁴⁷ The *ius naufragii* (right of shipwreck), sometimes *lex naufragii* (law of shipwreck), was a mediaeval custom (never actually a law) which allowed the inhabitants of the lord of a territory to seize all that washed ashore from the wreck of a ship along its coast. This applied, originally, to all the cargo of the ship, the wreckage itself, and even any passengers who came ashore, who were thus converted into slaves. This latter custom disappeared before the *ius naufragii* came to the attention of lawmakers. Modern law has a concept of *ius navigandi* (the right of navigating or navigation), i.e. the right of commerce by ships or by sea.

⁴⁸ Edited by D. Ječmenica, *SSA* 11 (2012), p. 40.

⁴⁹ The word translated as "ambassador" is *poklisar*, from the Greek ἀποκριστάριος.

⁵⁰ Ljubić, *Listine o odnošajah između Južnoga Slavenstva i Mletačke republike III*, p. 176.

sonally paid 1120 ducats at the expense of the wrecked ship and sent money to Venice through his envoy Michael de Buchia (Михајло Бућа). In another letter, written on 20 September 1349, Tsar Dušan gave an assurance to Venetian and Ragusan envoys that he would pay all his debts and, among other things, 1600 Venetian perpers for the ship, wrecked in the region of Zeta (modern Montenegro), and taken by Lady Tsaritsa (*И јеци имъ јестъ царьство ми дльж'но за др'во које се јестъ Ѹ зет'в раз'било, тере Ѹзела госпога царица, тис'кю .б. съть перперъ венетъчкіхъ*).⁵¹

3 Forgery of Charters

Forgery is defined as the fraudulent making or altering of a writing whereby the rights of another might be prejudiced. The subject matter of forgery must be a writing or document that has some legal efficacy (effectiveness) such as a charter, deed, mortgage, will, promissory note, receipt, or other writing. Serbian legal acts mention only forgery of charters promulgated by the monarch.

At the end of Saint Georges's charter we read: "Whosoever shall be found, inspired by the Devil, to have changed any line of this chrysobull ... let him receive my royal wrath and punishment, and let him pay to me, the King, 500 perpers" (Кто ли се обреце оухицрениемъ дигаволемъ прѣтворивъ єдиноу чрътou ѿт сихъ вишеписанихъ Ѹ сѣмь христовоула... ѿт таковихъ да приметъ кнїзвъ и наказднине ѿт кралевъства ми и да плати оу цариноу .Ф. перперъ).⁵² Dušan's Law Code in article 138 orders: "If there be in any charter a word wrongly written and there be meaning changed and words altered otherwise than my Majesty commanded, let these charters be torn up and they shall not have the inheritance" (Ако се обрѣте оу чѣмъ христоволи слово лъжно приписано и обрѣтou се словеса прѣтворен'наа, и речи прѣтворене на ино него цю, е повелѣло царство ми, да се тизѣ христовѣли раздѣроу, а ѿн'зи веќије да не има баџине).⁵³ As we can see, Serbian sources do not speak on forgery of a complete document, but rather on partial alteration of a text.

In a litigation between the Holy Mountain monasteries Esphigmenou (Μονή Εσγιγκένου) and Kastamonitou (Μονή Κασταμονίτου) in front of the city court of

⁵¹ Edited by D. Ječmenica, *ssa* 11 (2012), p. 49. It seems that Empress Helen had her own territory, probably in Zeta, where she governed independently.

⁵² Mošin, Ćirković, and Sindik, *Zbornik*, p. 329.

⁵³ Burr, "The Code of Stephan Dušan", p. 524; Novaković, *Zakonik*, p. 105; *Zakonik cara Stefana Dušana*, vol. III, p. 138.

Serres (1365), the monks of Kastamonitou presented as evidence Tsar Dušan's charter. The chief judge, Metropolitan Sabba, after examination of the charter, concluded that it was a forgery.⁵⁴

4 Other Crimes against the State and Sovereign

Among crimes against the State and sovereign we can cite the minting of coins secretly (article 169) and the nonpayment of land tax, so-called *soće* (article 198). However, we have examined those issues above.⁵⁵

54 See Solovjev, "Sudije i sud po gradovima Dušanove države", p. 82, and Živojinović, "Sudstvo u grčkim oblastima srpskog carstva", p. 243.

55 See Chapter 6 and Chapter 18, section 4.

Crimes Against the Judicial System

Scholars assume that the formation of the judicial system in the Serbian mediaeval State was the result of the same sources in the formal sense—the same events and circumstances—that were experienced in other legal systems but recorded much earlier in their cases than in Serbian law.

The main outlines of the earliest situation in the realms of the Serbian Župans and later Kings are mostly inferred from historical interpretation of the clauses contained in Dušan's Law Code, which mentions practices called *samosud* and *odboj*. The practice of powerful armed lords dispensing justice on their own accord was already strictly forbidden at the time that our surviving Serbian legal sources were written. Following the model of the more developed neighbour—the Byzantine Empire—the State began to interfere in the payment of sanctions shaped in customary law.

1 So-called “Samosud”

The Serbian word *samosud* (*samo* = self and *sud* = judgment)¹ designated in mediaeval legal terminology judgment arbitrarily and wilfully without a court. Usually mighty lords, who were creditors, used their power to seize by force the property of debtors. The Serbian monarchs tried very hard to stop this practice, especially in commercial relationships with the Ragusans. Already in the treaty of the Great Župan Stefan Nemanjić with Dubrovnik (1214–1217), we read: *a da ne izma* (а да не изма),² meaning not to be deprived of anything by any party to the agreement. However, this provision was not followed by a corresponding penalty, which went unmentioned. Punishment was provided for the first time in King Milutin's treaty with Dubrovnik (1282–1289), ordering: “Whosoever shall be found doing an act of malice or seizing property, let him receive my royal wrath and penalty, and let him pay 500 perpers to me, the King” (Кто ли се обрѣте испакостивъ имъ или цю юзмъ одъ нихъ да примѣ гнѣвъ и наказаніе ѿтъ краљевства ми и да плати петь сѧть перперь краљевства ми).³

¹ In Serbian *sud* also means court, tribunal and courthouse, but in this coined word it means judgment.

² Mošin, Ćirković, and Sindik, *Zbornik*, p. 87. The word *izam*, used in the treaty, is unclear and we shall discuss it in Part Six.

³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 290.

Samosud was mentioned also in documents regulating relationships within a manor. Saint Stephen's charter prohibits *samosud* among a monastery's villagers, and prescribes a fine of six dinars (самосуђь по .S. динаръ).⁴ Dušan's Law Code, trying to protect the immunity rights of the Church, in article 30, entitled "Of molesting Clerics" (О оуѓ'вани црквенаго чловѣка), orders:

Henceforward no authority may molest a monk or a serf of the Church. And whosoever shall do this in the lifetime or after the death of my Majesty, he shall not be blessed. And if anyone be guilty towards another let him sue him through the courts and by suit according to law. And whosoever shall molest or damage anyone without judgment, let him pay sevenfold.

От сеља да не оуѓ'вѣ ни једина власть калѹгіера, или црквенаго чловѣка; и кто потвори сїе при животѣ и по съмрти царства ми да н'єсть благословенъ; ако ли јестъ кто комѹ кривъ, да га ище соудомъ и правдомъ по закону; ако ли оуѓ'вѣ без' соуда, или комѹ забави, да плати самосед'мо.⁵

Undoubtedly article 30 refers to the noblemen class. As they were powerful, they abused their force, they were impudent, and they often ignored the judiciary system, molesting peaceful clerics. That was the reason why Dušan's Law Code provided for a special crime against judicature (article 101), called "On violence" (О силїю), and it runs as follows: "There shall be no violence against any man in my dominion: and if there should be a case of assault or violence, let all his horses be taken from him, one half to the Tsar, the other to him who was attacked" (Силе да н'єсть никомѹ ницио Ѹ земли царства ми; ако ли кога вебрѣте наезда или сила похваљна; внизији коны наезны въси да се оузмѹ; половина царства ми, а половина вномѹзїи когдано ѿ наихадли).⁶ The Athos, Hodosh and Bistrizta texts start with a wording: "There shall be no violence against anyone and for any debt in the imperial lands" (Силѣ да н'єсть никомѹ ни за юдинъ длагъ оу земли царскон), and add that the penalty shall be: "and the men committing invasion shall be punished as is written in the Law of the Holy Fathers, in the Town Branches;⁷ let him be tortured as would a deliber-

⁴ Ibid., p. 465.

⁵ Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, pp. 28–29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

⁶ Burr, "The Code of Stephan Dušan", p. 516; Novaković, *Zakonik*, pp. 77–78; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

⁷ I.e. *Procheiron*, Chapter xxxix.

ate murderer" (и чловѣци наѧхалци да примоуть казнь како пише оу закону свѣтихъ атъць, оу градсихъ гранахъ, да моучит се тако и волни оубѣица).⁸ So, article 101 prohibits *najezda* (invasion, foray) and *sila pohvalna* (violence), typical phenomenons of a feudal society. As the Athos, Hodosh and Bistrizta texts use the word "debt" (дльгъ), which was in Serbian mediaeval law a general term for a claim or demand of outstanding debts, it is evident that article 101 prohibits judgment arbitrarily and wilfully without a court, so-called *samosud* (*sibi ius dicere*).⁹ The expressions *najahati* (наѧхати) = "to attack" and *koni najezdni* (кони наѧздни) = "foray with horses" demonstrate that the invasion could be done by affluent people who possessed horses and armed men, i.e. noblemen.

Noblemen's foray was very well known in the feudal epoch in German (*Reisa, Heerung*), Czech (*výboj*), Polish (*zajazd*,¹⁰ *invasio domus*) and Russian (наезд, грабеж)¹¹ law. Haughty noblemen did not want to appear in court, but rather with armed troops attacked villages of other noblemen, trying to charge debts.¹² Some examples can be found in Serbian law as well. Despot Stefan Lazarević, in the charter issued to the monasteries Tismany and Voditsa (1406), says that the monasteries are free from every noblemen's invasion (И да сѹ свободни ... и ѿ всаке наезде властелске).¹³ In the year 1401, Durica Petrović, a citizen of the Ragusan Republic, sued to a court in Dubrovnik the nobleman Dumko Bobaljević, complaining that Bobaljević and his men attacked him with a sword and wanted to cut his head and seize his property (наѧха на мене ... сь иунаци своими и тръгоще мача на мене, не би ни ми липъсало да ми глагу одсече и вашъ добитак разаспе). Ten years later (January 1411) in the city of Trepča, Ivan Karuč, a Ragusan subject, wrote to the Doge and Community of Dubrovnik, complaining that Nikša Peščić (a Ragusan citizen as well) with his company attacked Karuč's house (наѧха ми на куќију), plundered his property,

⁸ Novaković, *Zakonik*, p. 78; *Zakonik cara Stefana Dušana*, vol. I, p. 186; vol. II, pp. 134, 187, 250.

⁹ Taranovski, *Istorija*, vol. II, p. 119.

¹⁰ "Pan Tadeusz" ("Master Thaddeus"), an epic poem by the Polish poet, prose writer and philosopher Adam Mickiewicz (1798–1855), has a subtitle "Ostatni zajazd na Litwie" ("The Last Foray in Lithuania"). The author describes a nobleman's invasion from the year 1800.

¹¹ See articles 10 and 11 of the "Novgorod Judicial Charter" ("Новгородская судная грамота"), *Памятники русского права* [Sources of Russian Law], ed. S.V. Yushkov, vol. II, *Pamyatniki prava feodalno-razdroblenoy Rusi, XII–XV vv.* [Sources of Feudal Divided Russia, 12th–15th Centuries], ed. A.A. Zimin (Moscow 1953), pp. 213 and 234.

¹² Cf. Solovjev, *Zakonik cara Stefana Dušana*, p. 258.

¹³ Ed. Mladenović, *Povelje i pisma despota Sređana*, p. 352.

and plucked, beat and dishonored him (и куплу ми разграбише, а ме оскубоше и убише и окалаше).¹⁴

2 Contumacy

Contumacy (from Latin *contumacia* = firmness or stubbornness, from *contumax* = rebellious) is the stubborn refusal or intentional omission of a person who has been duly cited before a court to appear and defend the charge laid against him. In Serbian mediaval law this was called *pečat* (печатъ), literally “seal”, or *prestoj* (прѣстој). According to article 62 of the Code, all subjects of the Empire (except greater lords) were summoned with a seal. The seal was a symbol of State power, and disobedience of it was a crime against the judicial system. Already, the Žiča chrysobull wrote: “And if somebody refuses a seal [summons], that shall be punishable with a fine belonging to the King, and let the Archbishop take it” (Да ако не поиде по печати, то тѣзи да се Ѹписѹю пеѹати Ѹ кралла, и да је Ѹзима архиепискѹпъ сеѹб).¹⁵ *Pečat* as a fine for contumacy was mentioned by Saint George’s chrysobull (1300), the charter of Queen Helen referring to the village of Zator, near Kotor (1276–1308), Saint Stephen’s chrysobull (1314–1316)¹⁶ and the Dečani chrysobull (1330).¹⁷

The noun *prestoj* comes from the verb *prestojati* (прѣстојати) = “to stand throughout”: because the other summoned party came to court, it stood waiting and “stood throughout”. *Prestoj* (contumacy) was mentioned for the first time in Saint George’s charter, among fines due to the Church (ни прѣстоја).¹⁸ The word means at the same time a crime of contumacy and a fine payable for it. In the same charter, we also read: “For contumacy, a Church villager has to pay 18 dinars ... And whosoever shall be summoned, and shall not come, shall pay for contumacy 18 dinars” (И чловѣкоу црксовномоу прѣстоји. Ил. динаръ ... И аще го позове и намо кто на соудъ да моу јесть прѣстоји. Ил. динаръ).¹⁹ Article 56 of Dušan’s Law Code, entitled “Of summoning lords” (О позову властѣвскомъ), orders: “And whosoever shall be summoned ... and shall not come ... he is at

¹⁴ Solovjev, *Odarbani spomenici*, pp. 190 and 194. Cf. R. Mihaljić, “Najezda”, in *LSSV*, p. 427.

¹⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

¹⁶ Ibid., pp. 317, 326, 410, 465.

¹⁷ Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 136.

¹⁸ *Prestoj* as a fine, due to the Church, was also mentioned in two of King Dušan’s documents: 1) charter to the monastery of Treskavac, promulgated after 1337 (ed. Novaković, *Zakonski spomenici*, p. 671, para. x), and 2) chrysobull for Htetovo monastery from 1343 (ed. M. Koprivica, *SSA* 13 [2014], p. 150).

¹⁹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 317 and 328.

fault, and from that lord shall six oxen be taken" (и кто буде позванъ ... и не приде ... да есть кривъ и престои властелинъ, 5, воловъ).²⁰ This archaic penalty of six oxen was prescribed only for noblemen. What kind of punishment existed for other social classes, especially for commoners, we cannot find in the Law Code. It seems that the fine from Saint George's charter (18 dinars) was very well known, and the Code did not consider it necessary to repeat it.

3 Refusal of Judge's Envoy or Clerk (So-called *wtboi*)

The Serbian monarchs wanted to protect the personal staff of the judges and to add dignity and security to the judicial service. So, refusal of a judge's envoy or clerk was called *otboj* or *odboj* (*wtboi*, *одбои*), from the verb *odbiti* = to refuse. To refuse a judge's clerk, who was executing his order, was a crime against the judicature, known already in the charters promulgated before Dušan's Law Code. However, the Saint George's, Saint Stephen's and Dečani charters mention *otboj* as one of the fines payable to the Church,²¹ but without specifying the essence of the crime.

Dušan's Law Code regulates refusal (*otboj*) in article 107: "Whosoever is found to have refused a judge's envoy or clerk shall be deprived of his property; all he hath shall be taken from him" (Кто се наайде отбивъ соудина сокал'ника, или пристава, да се плаћни, и да мој се въсе оузмъ цю има).²² The interpretation of article 107 is aggravated by the fact that different transcripts do not use the same expressions. Prizren's text has *оубывъ* (to kill or to beat in Burr's translation),²³ while all other manuscripts (including the oldest, the Struga transcript) have *вдбињъ* or *отбивъ* (to refuse).²⁴ The word translated as "judge's envoy" in Prizren's text is *сокал'ника* and in Struga's *соколаника*²⁵ = *sokalnik*, a type of commoner with unclear social status.²⁶ Accepting the interpretation of Stojan Novaković that a *sokalnik* is a cook or baker, Malcolm Burr translated the beginning of article 107 as follows: "Whoso shall beat the cook or officer", and gave the following explication: "Dušan's judges were itinerant, constantly trav-

²⁰ Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

²¹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 317, 326, 465; Ivić and Grković, *Dečanske hrisovulje*, p. 136. The amount of the fine was 18 dinars.

²² *Zakonik cara Stefana Dušana*, vol. II, p. 25; Novaković, *Zakonik*, p. 82.

²³ *Zakonik cara Stefana Dušana*, vol. III, p. 128; Burr, "The Code of Stephan Dušan", p. 517.

²⁴ Novaković, *Zakonik*, pp. 82–83.

²⁵ *Zakonik cara Stefana Dušana*, vol. III, p. 128; vol I, p. 110.

²⁶ See Chapter 5.

elling about the country, as Novaković comments, where inns were few and probably confined to the cities and towns, so there is nothing remarkable in their taking a personal cook with them, as well as their beadle. It was also a protection against poisoning.”²⁷ However, all other transcripts have посыльника or послалика (envoy) instead of *sokalnik*. Anyway, the general trend of Dušan's legislation is to promote the efficiency and independence of the judiciary, and article 107 in this way is quite consistent with articles 178 and 148.²⁸ Article 178, entitled “Of judge's writs” (Ѡ сѹдїи пї книзѣ), orders: “If judges send their officer²⁹ or writ and any man disobey and repel the officer, then shall the judge send his writ to the prefects and to the lords in which province the disobedient party is, that these authorities execute the writ of the judge. And if these authorities do not so execute, let them be punished even as the disobedient ones” (Сѹдїе коудє посилаю приставе, и книги свое, аще кто прѣчюе и штвые пристава, да пишъ сѹдїе книгоу кефаламъ и властѣламъ оу чиен боудѣ дръжавѣ шнизи прѣслоушници, да съврьше за този власти цо пишъ сѹдїе; аще ли не съврьше власти, да се какжъ како прѣлоушници).³⁰ Article 148 contains a similar provision, under the title “Of judges” (Ѡ сѹдїах): “If a Church, or a lord, or any other man in my Empire disobey the writ of my judges whom I appoint to judge in the land, or whatever they write concerning any brigand or thief, they shall all be punished as disobedient to my Majesty” (Сѹдїе које царство ми положи по земли соудити; ако пишъ за цю любо за гоусара и тата, или за које любо шправданіе соудѣбно, тере прѣлоуша книгъ сѹдїа царьства ми, или црквь, или властѣлинъ, или кто любо чловѣкъ оу земли царствва ми, тызїи вѣси да се шсоудѣ тако и прѣлоушници царствва ми).³¹ It is clear that every man who refused to execute a judge's writ would be punished as disobedient to the Tsar.

²⁷ Burr, “The Code of Stephan Dušan”, p. 517.

²⁸ Not with article 111, as Novaković thought (*Zakonik*, p. 212). Cf. Taranovski, *Istorija*, vol. II, pp. 123–124.

²⁹ The word translated as “officer” is *pristav*. On *pristav*, see Chapter 26, section 6.2.

³⁰ Burr, “The Code of Stephan Dušan”, p. 534; Novaković, *Zakonik*, pp. 138–139; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

³¹ Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 115; *Zakonik cara Stefana Dušana*, vol. III, pp. 140–142.

Crimes against Public Peace and Order

Peace, tranquility, and order and freedom from agitation or disturbance are that invisible sense of security which every man feels so necessary to his comfort, and for which all governments are instituted. In Nemnjić's State there existed an estate society, based on immunity, i.e. exemptions, as from serving in an office or performing duties which the law generally requires other subjects to perform.¹ The most important immunity was exemption from paying taxes, established in favour of the Church, but noblemen had special privileges as well. Violation of any kind of immunity, in mediaeval Serbia, was considered as the first crime against public peace and order. Other crimes against public peace and order were: noblemen's violent measures against commoners, villager's reprisals, commoner's councils, and fugitive serfs.

1 Violation of Immunity Rights (посилије, насилије, забава)

Violation of privileges that the sovereign gave to the Church, to noblemen, or to Ragusan merchants was called *posilije* or *nasilije* = violence² and *zabava* = disturbance.³ *Posilije* was mentioned in Saint George's charter, where we read: "And whosoever shall be found trying Saint George's villager by violence ... let him be cursed by God and all Orthodox and Sainted Tsars and Kings, and to pay a tariff of 100 perpers" (И кто се найде соудивъ чловѣку Свѣтаго Георгита посилиемъ ... боуди на ніемъ клетвъ Божиї и всѣхъ правовѣрныхъ свѣтыхъ царь и краљ ... и да плати оу царину .Р. перьперь).⁴ According to Saint Stephen's charter, everyone who hunted on the monastery's manor using force has to give to the Church 12 oxen (Кто ли се вбреће посилиемъ лове да плати цркви .Вl. воловъ). In the next lines, the same term (*posilije*) was

¹ See M. Ivanović, "Razvoj institucije imuniteta u srpskoj srednjovekovnoj državi do kraja vladavine kralja Milutina" [“Development of the Institution of Immunity in the Serbian Medieval State until the End of Reign of King Milutin”], *Ič* 67 (2018), pp. 49–83.

² Both terms are obsolete. In modern Serbian the word is *nasilje*.

³ On the meaning of the word *zabava* see Chapter 12, note 13.

⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326. The chrysobull of then-ex-King Dragutin to the monastery of Saint Stephen in Banjska mentioned only anathema for anyone who took something using violence (посилиемъ) from the monastery. *Ibid.*, p. 471.

mentioned two further times.⁵ So, the King protected both the judicial and economic immunity of the Church.

The word *nasilje* can be found in the oath of Ragusan Doge Johannes Dandulus (Жани Дандуло) promising a peace and friendship to Serbian King Stefan Vladislav (1234–1235). Addressing the Serbian King, Johannes Dandulus said: “And if any violence happened to you and you refuge in our town” (И ако ти се згоди кое насиље и прибегнеши Ѹ градъ нашъ).⁶ King Milutin in his chrysobull to the monastery Gračanitza (1315–1321) says that he saw violence to the villagers of the Holy Virgin monastery (И видѣ кралевство ми насилие на людехъ Прѣсвѣтнѣ Богородицѣ).⁷ Telling the story of his reign, King Milutin in the chrysobull donating a house lot (*selište*)⁸ of Uliyari (15th century) narrates that his brother Stefan Dragutin came to him “asking help from the violence of godless men” (и любовѣю молитъ помоциї мї ємоу ѿтъ таковаго насила везбожныхъ).⁹ King Stefan Dečanski’s chrysobull to the Episcopacy of Prizren (April 1326) and King Stefan Dušan’s chrysobull for Htetovo monastery (1343) contain a general formula that monasteries are free from any kind of violation (да соутъ ѿ всакон свободъ ѿтъ всакога насилия).¹⁰ Violation of monastery rights was considered as a crime against public peace and order, even as a crime against the State. This is clear from the text of King Stefan Dečanski’s charter to the monastery of Hilandar (6 September 1327), where we read: “And whosoever be found [to violate a monastery] let him pay 500 perpers and be treated as a traitor” (Кто ли се наре ... да плати .е. сът перперъ, и да јестъ неебр'њь).¹¹

Dušan’s Law Code tries to prevent violation of both immunities, judicial and economic, in two articles. First, article 12 orders: “And laymen shall not judge clerical matters. And should any layman judge an ecclesiastical matter, let him pay 300 perpers. Only the Church shall judge [“ecclesiastical matters”, *casus*

5 Ibid., pp. 462 and 469.

6 Ibid., p. 134.

7 Ibid., p. 503.

8 On the meaning of the word *selište*, see Chapter 13, note 41.

9 Mošin, Ćirković, and Sindik, *Zbornik*, p. 537. The “godless men” are Bulgarian feudal lords Darman and Kudelin who were jointly ruling the region of Braničevo (today in Eastern Serbia) as independent lords. They regularly attacked Stefan Dragutin’s Syrmian Kingdom, using Tatar’s and Cuman’s mercenaries. The historical background of this charter was studied by S. Ćirković, “Biografija kralja Milutina u Ulijarskoj povelji” [“King Milutin’s Biography in the Ulijarska Charter”], in *Arhiepiskop Danilo II i njegovo doba, međunarodni naučni skup povodom 650 godina od smrti, Srpska Akademija Nauka i Umetnosti, naučni skupovi, knjiga LVIII, odjeljenje istorijskih nauka, knjiga 17* (Belgrade 1991), pp. 53–68, especially p. 62.

10 Edited by S. Mišić, *SSA* 8 (2009), p. 18, and M. Koprivica, *SSA* 13 (2014), p. 151.

11 Edited by S. Mišić, *SSA* 3 (2004), p. 7.

spiritualis]" (И доуходовномъ дльгъ, козмици да не съдѣ. кто ли се наидѣ штъ коzмикъ соудиъ црксовномъ дльгоу, да плати, тѣ, перперъ. тѣк'мо црксовъ да соуди).¹² Article 34 runs as follows:

And into my imperial estate ... the people of the Church shall not go, neither for mowing hay nor for ploughing, nor for vineyards, nor for any compulsory labour, small or great. From all compulsory labour my majesty exempts them, let them work only for the Church. And whosoever shall be found to have driven men of the Church¹³ into an imperial estate¹⁴ and disobey the law of my majesty, the goods of that owner shall be confiscated and he shall be punished.

И цю съ села мероп'шине, царства ми ... црксовны людїе да не гредоу оу мѣроп'шине, ни на сѣно, ни на ѿраніе, ни на виноградѣ, ни на єдинѣ работе, ни на малѣни на великоу; штъ всѣхъ работе ѿсвовоdїи царство ми; тѣк'мо да работаю цркви; кто ли се наидѣ изъгнавъ метохію на мироп'шиноу, и прѣчюе законъ царства ми, тѣзи властникъ да се распе и накаже.¹⁵

The object of this clause is to protect the Church against the enticing away of its labourers by other landowners. The article also conferred privileges of exemption of Church tenants from the obligations of compulsory labour.

Zabava (забава, забава) in Serbian mediaeval law means disturbance, interference, nuisance, hindrance, and the verb *zabaviti* (забавити) to disturb, to molest, to break peace or order. Disturbance (*zabava*) was a crime against public peace and order, and its perpetration could be on roads, market-towns and fairs. Provisions on disturbance were already present in the treaties with Dubrovnik: sovereigns from the Nemanjić dynasty wanted to secure freedom of movement and trade to their Ragusan commercial partners, and they prohibited any kind of disturbance. For example, in King Milutin's charter presented to the Republic of Dubrovnik (1282), we read: "Merchants can move along my

¹² Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 16. *Zakonik cara Stefana Dušana*, vol. III, p. 102.

¹³ *Metochija*, a word of Greek origin (μετόχιον = a settlement), which meant a monastic estate.

¹⁴ *Meropšina* meant every village, settled by villagers (*meropsi*), belonging either to the Tsar himself or to any nobleman. Đuro Daničić, *Rječnik*, II, p. 105, translated *meropšina* as *terra quam tenent coloni* мѣропльси dicti, *operaque serva ab us praestanda*. See M. Blagojević, "Meropšine", in *LSSV*, pp. 397–398.

¹⁵ Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 32; *Zakonik cara Stefana Dušana*, vol. III, p. 108.

Royal land freely, without any apprehension and disturbance" (Коупъци ихъ да си ходе по земли кралевства ми без болазни и без забаве, съ всяком свободомъ).¹⁶ According to King Stefan Dečanski's chrysobull to the Episcopacy of Prizren (1326), a perpetrator of the crime is the person "who wants to disturb someone and give battle to somebody" (Кто ли хоце комоу забавити или бои въздвигнеть).¹⁷

One of the main duties of central government was to secure and guarantee freedom of movement and trade, as is clearly emphasized in articles 118, 119 and 120 of Dušan's Law Code. Article 118 orders: "No man, noble or other, may molest merchants who travel about the Tsar's dominions, nor rob them by force nor scatter their merchandise, nor take their money by force" (Тргов'ци кои гређу по цареве земли да не бътътъ вол'ни никои властелини, или кои любо чловѣкъ забавити по силѣ; а или разбити коуплю, а динаре мѣ силомъ нафрѣци). Article 119: "Merchants shall travel freely without hindrance in my dominion" (Тргов'ци и да гређу свободно беззабавѣ по земли царства ми). Article 120: "An Imperial customs officer may not hinder nor detain any man in order to sell his goods at a law price" (Цариникъ царевъ да не бътъ вол'ни забавити, или задръжати кога чловѣка да мѣ коуплю продастъ оу без'ценїе).¹⁸ The penalty for disturbance was a fine of 500 perpers: charter to the Episcopacy of Prizren reads "let him pay to me, the King, 500 perpers" (да плати кралевство ми петъ съть перперь); article 118 of the Code reads "Whosoever shall be found seizing or robbing their merchandise shall pay 500 perpers" (кто ли се наидѣ силомъ растоваривъ или развалявъ да плати, є, съть перъперь).¹⁹ A much stronger penalty for any disturbance of Ragusan merchants was provided in Tsar Stefan Uroš's treaty with Dubrovnik (24 April 1357), where we read:

Whosoever from my noblemen or my courtiers in my Imperial dominions change this writ and my Imperial benevolence and disturb in any way Ragusans and prevent them to go on the market-towns, to buy and sell, or shall be found seizing their merchandise, he shall be treated as a traitor and let him pay sevenfold what he was owing, according to the Tsar's Law Code.

¹⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 276. Cf. Chapter 7, section 1.

¹⁷ Edited by S. Mišić, *ssa* 8 (2009), p. 17.

¹⁸ Burr, "The Code of Stephan Dušan", pp. 519–520; Novaković, *Zakonik*, pp. 91–93; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

¹⁹ *ssa* 8 (2009), p. 17; Burr, "The Code of Stephan Dušan", p. 519; Novaković, *Zakonik*, p. 91; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

Кто ли ино ђчини јадъ властель царства ми а или јадъ владѹцихъ въ земли царства ми, и потвори сије записаније и милость царства ми, и забави цио Дѹбровчаномъ, да не продадо тргове и кѹпио свою и да си кѹпѹю цио имъ тՐбѹје, а или имъ цио ќезме, да ми јесте неверни џ неверно име, и да плати въсе самоседмо цио имъ бѹде стрѹль, по законикѹ царства ми).²⁰

The treaty refers to the last lines of article 30 of Dušan's Law Code ("And whosoever shall molest or damage anyone without judgment, let him pay sevenfold", *ако ли оуѓ'вќ без сојда, или комѹ забави, да плати самосед'мо*).²¹

2 Noblemen's Violent Measures against Commoners

In Serbian mediaeval society there existed a strong class struggle between noblemen, as the privileged social rank, and exploited commoners. Several articles of Dušan's Law Code attempt to limit this antagonism.

2.1 Malfeasance of the Maintenance Right

Under primitive economic conditions as existed in feudal society, it was very rare that State officials had salaries. When they were travelling on official duties, one of their privileges was a right to demand costless board and lodging from local inhabitants. The privilege was known from the Roman epoch as *desensus*,²² in mediaval Croatia it was called *zalaznina* or *zalaz*,²³ and in Serbia *priselica* (приселица). It was a heavy burden for villagers, very often followed by a nobleman's malfeasance—the doing of an act which is wholly wrongfull and unlawful. It happened that a lord, who goes around his dominion, would do evil to his serfs: they might plunder or even burns their homes by rancour. Dušan's Law Code attempts to restrain noblemen's wantonness, which could provoke commoner's resistance, promulgating article 57, entitled "Of maintenance" (О прѣцелице) and containing a very strong penalty: "And if any lord be on maintenance and do wrong to any man by rancour, waste his land, burn his house, or do any other mischief, his holding shall be taken from him and another shall not be given to him" (Кои је властелинъ на прѣцелице; комѹ пизмомъ које зло

²⁰ Edited by M.A. Černova, *SSA* 10 (2011), p. 63.

²¹ Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, pp. 28–29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

²² M. Rostovtzeff, *Gesellschaft und Wirtschaft im römischen Kaiserreich* (Leipzig 1931, reprint Aalen 1985), vol. II, p. 97.

²³ Mažuranić, *Prinosi*, p. 1646.

ѹчиши земли пленомъ, или коукie пожеже, или кое любо зло ѹчини; таکози тази дръжава да мѫ се оузме, а ина да не дастъ).²⁴

2.2 *Nobleman's Evil Doing*

In the first part of Dušan's Law Code, article 57 deals with the abuse of authority and hospitality on the part of lords when travelling on duty or some temporary service. In the second part of the Code, promulgated in 1354, article 142 speaks again on noblemen's evil doings toward villagers and prescribes a more severe penalty:

Of Lords [Ѡ властѣличицкѣх]: Any lord, greater or less, to whom I have given land and towns, if any one of them be found to have seized villagers and people against the law of my Empire which I have enacted in my Council, let his estate be taken from him and all that damage which he has done, let him pay for from his own house and let him be punished even as a deserter.

Властѣльм и властѣличицкемъ коимъ юсть дало царство ми землю и градовѣ; ако се кто ѿд ныхъ вбрѣте шпленивъ села и людїи и затръвъ прѣзакон царства ми цю юсть царство ми оуздаконило на съборѣ; да моу се оузмѣ дръжава; аѡнъзи цю боудѣ строуль да въссе плати ѿтъ свое коукie, и да се каже како и прѣвѣглыць.²⁵

Dušan's policy was to administer the new provinces wisely and justly, so he sharpened the punishment for misdemeanour from mere confiscation to that of a deserter, which included mutilation.

In spite of this strict clause, noblemen often plundered villages and monasteries, instead of administering justly their domain. In the Greek charters of Serbian sovereigns we can find figurative expressions setting free monastery manors from noblemen's violence. For example in King Dušan's chrysobull for the Russian monastery of Saint Panteleimon on Holy Mountain (1348–1349), we read: "And nobody from kephale and tax collectors or anyone else in this land may do harm or damage to these manors, or plunder with greedy and rapacious hands, or do any other violation and oppression and demand" (*καὶ οὐδεὶς τῶν κεφαλαττικεύοντων ἐν τῇ τοιαύτῃ χώρᾳ, ἢ τῶν τὰ δημόσια διενεργούντων,*

²⁴ Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, pp. 48–49; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

²⁵ Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, p. 140.

ἢ τῶν ὅλων ἀπάντων ἐπάξει ὅλως εἰς τὰ τοιαῦτα κτήματα κατατριβὴν καὶ ἐπήρειαν, ἢ χεῖρα πλεονέκτην καὶ ἄρπαγα, ἢ ἐτέραν οἰανδήτινα ἐπίθεσιν καὶ καταδυναστείαν καὶ ἀπαίτησιν).²⁶ Tsar Dušan's chrysobull to his Greek courtier George Phokopoulos (May 1352) says "that nobody from my Imperial lords, great or small, dare to enter his houses, or to plunder with greedy and unjust hands on his estates" (καὶ οὐδὲν ἔξειν ἄδειαν οὐδεὶς τῶν ἀπάντων τῶν ἀρχόντων καὶ ἀρχοντοπούλων τῆς βασιλείας μου ἢ ἐν τοῖς οἰκήμασιν αὐτοῦ εἰσελθειν ἢ πλεονεκτικὴν καὶ ἄδικον αὐτοῦ χεῖρα ἐπὶ τοῖς κτήμασι κινῆσαι αὐτοῦ).²⁷ Dušan's half-brother Simon, in the chrysobull granting privileges and estates to his nobleman John Tzaphas Oursinos Doukas (January 1361), prohibits "that anyone dare to put a criminal and harmfully foot [plunder] on [Tzaphas' estates]" (πόδα κακωτικὸν ἢ ἐπιζήμιον).²⁸

3 Villagers' Reprisal

The intention of Dušan's Law Code was to secure peace and order in his Empire. As the Tsar protects commoners from noblemen's violent measures, at the same time he protects lords from the vengeance of villagers. The first case was provided by article 58, under the title "Of the Death of a Lord" (Ѡ ουμρѣни властель): "If any lord who owns one village in a district or among districts should die and any damage be done to that village by fire or other cause, then shall the whole district pay for that damage" (Кои властелинъ оумре а има юдно село ѿ жоупѣ, или мегю жоупами; цю се злo оучини томъзи селоу, пожегомъ или иинимъ чимъ любв, въсѣ тѹзи злобъ да плати школина).²⁹ So, the connection between articles 57 and 58 is clear: while article 57 punishes a lord who by rancour burns and plunders villagers' homes, article 58 provides a penalty for villagers who burn the village and palace of a hated lord. It could be possible that a nobleman with his guard pressed villagers, but they had no courage to revolt against him during his lifetime. However, when the nobleman dies and the manor remains without a heir and any protection, villagers could easily plunder his property. Collective criminal liability for a neighbourhood was provided for this crime.

The second part of the Code contains article 144 ("On fugitives",³⁰ Ѡ поеѣ-глыцѣ), which represents a supplement to article 58, ordering: "If any lord, great

²⁶ Solovjev and Mošin, *Diplomata graeca*, p. 1128.

²⁷ Ibid., p. 180.

²⁸ Ibid., p. 236.

²⁹ Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 49; *Zakonik cara Steфana Dušana*, vol. I, p. 102; vol. III, p. 114.

³⁰ "Of Those who go Abroad" in Burr's translation (p. 525).

or small, or any other man of my Empire be found as fugitive,³¹ and the neighbouring village and the country around arise and plunder his home and cattle which he has left, those who do so shall be punished as traitors to my Empire" (Ако ли се ѡберѣте властѣлицы, или властѣличикъ побѣглыцъ, и инь кѣто любо царьства ми, тere оустанѣ на грабленїе школ'ниа села и жоупа на нїеговѣ коукю и на єговѣ добитъкъ цио боудѣ ѡставиль; ѿнизїи кои този оучине да се каждъ како нєвѣр' ниции царства ми).³² So, article 58 provides for a quiet succession in the event of the death of a landowner and protects his property during the interval, while article 144 treats a case of a fugitive lord who was considered as a traitor.

4 Commoner's Council

Article 69 of Dušan's Law Code, considering the "Commoners' Council" (Съборъ севровъ), remains one of the most disputed. It runs as follows: "Commoners have no council. If any meet in council let his ears be cut off, and let the leaders be singed" (Севрова събора да н'бъсть; кто ли се ѡберѣте събор'никъ, да мѣ се оуши оурежъ и да се ѿсмѣде поводъ чїе).³³ Although being short this article opens several questions.

What is the essence of the crime, i.e. what is the meaning of the wording "Commoners have no council" (Севрова събора да н'бъсть)? Different hypotheses have been presented: a) commoners have no right to take part at State Council sessions (W.A. Maciejowski, N. Krstić); b) prohibition of county meetings (D. Alimpić); c) prohibition of all village assemblies (D. Lapčević); d) prohibition of tribal assemblies (T. Đorđević).³⁴ However, the right interpretation was given by Stojan Novaković. According to him article 69 was a practical police-measure, in order to prevent commoners' conspiracies that may result in rebellions against noblemen.³⁵ His opinion has been accepted by the majority of modern scholars.³⁶ To reinforce Novaković's point of view we shall point to the

³¹ "Fare abroad" in Burr's translation (p. 525).

³² Burr, "The Code of Stephan Dušan", pp. 525–526; Novaković, *Zakonik*, p. 111; *Zakonik cara Stefana Dušana*, vol. II, p. 206; vol. III, p. 140.

³³ Burr, "The Code of Stephan Dušan", p. 211; Novaković, *Zakonik*, p. 56; *Zakonik cara Stefana Dušana*, vol. II, pp. 188 and 246; vol. III, p. 118.

³⁴ Solovjev, *Zakonik cara Stefana Dušana*, p. 230.

³⁵ Novaković, *Zakonik*, pp. L1–LII.

³⁶ A. Solovjev, "Sebrov zbor" ["Commoners' Council"], *APDN* 34 (1928), pp. 170–178, and *Zakonik cara Stefana Dušana*, pp. 230–232; Taranovski, *Istorija*, vol. II, pp. 129–130; Radović, *Srpski državni sabori*, pp. 207–208; Janković, *Istorija*, pp. 84–86; Šarkić, *Srednjovekovno srpsko pravo*, pp. 98–99.

provision of Byzantine law, already quoted,³⁷ that contains a ban on all assemblies of the people ($\tauὸ συνάγεσθαι ὥχλον$) without the Emperor's permission. There are similar provisions in the legislation of other feudal States, especially from Western Europe.³⁸

The historical sources do not contain information of any commoners' rebellion in mediaeval Serbia, but Dušan and his government knew everything about the anti-aristocratic uprising of the Zealots in Thessaloniki, during the Byzantine civil war of 1341–1347 (or Second Palaiologan War).³⁹

However, some charters demonstrate that commoners' councils held in the presence of State officials or noblemen were allowed. The Dečani chrysobull, for example, says "that boundaries were fixed by judge Bogdan and the assembly of those villages" (а тези меѓе оутеса Богданъ соудил и с'воръ твръди сељъ).⁴⁰ In some documents, written either in Serbian or in Greek, we find the wording "noblemen and *chora* assembled" (събраше се властеле и *хора*).⁴¹ The Greek word *χώρα* means land, county, but in this context commoners' councils (*χωρίται* = villagers).

The second part of article 69 provides different penalties for participants and for leaders. The participants (*sabornik*, *съборникъ*) were to be punished by cutting off ears, while the leaders (*povodčija*, *повођчија*), besides cutting off of

³⁷ *Syntagma Σ-II*, ed. Ralles and Potles, pp. 449–450; ed. Novaković, pp. 476–477. Cf. above, "Crime of Treason".

³⁸ For examples see Solovjev, "Sebrov zbor", pp. 170–177.

³⁹ In 14th-century Europe there were several fierce insurrections by commoners: 1) 22 February 1358, uprising of the populace of Paris, led by Étienne Marcel, provost (*prévôt*) of the merchants of Paris under King John II of France, called John the Good (Jean le Bon); 2) the Jacquerie, a popular revolt by peasants (because the nobles derided peasants as "Jacques" or "Jacques Bonhomme"—"Jack Goodfellow", for their padded surplice, called a "jacque") that took place in the northern France in early summer 1358 during the Hundred Years War; 3) the Revolt of the Ciompi, a rebellion among unrepresented artisans, labourers and craftsmen (they did not belong to any guilds and were therefore unable to participate in the Florentine government), which occurred in Florence from 1378 to 1382; 4) the Peasants' Revolt of 1381 in England, led by Walter "Wat" Tyler, also during the Hundred Years War. It is disputable whether the Serbian aristocracy was informed on these uprisings.

⁴⁰ Edited by Ivić and Grković, p. 99.

⁴¹ Inventory of Htetovo monastery property from the year 1343 (Solovjev, *Odabrani spomenici*, p. 129; Slaveva, Miljkovik-Pepek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 289); King Dušan's *prostagma* (πρόσταγμα) issued between September and December 1345, to Raïko, kephale of Trillisios and Brontos (Solovjev and Mošin, *Diplomata graeca*, p. 24); Document on litigation from the year 1376, concerning the boundaries in the region of Strumitza in North Macedonia (Solovjev, *Odabrani spomenici*, p. 170).

their ears, by singeing, as well. There have been several different interpretations regarding those two penalties.

What does the verb *urezati* (ѹрѣзати) mean? Although the word *urezati* was already translated by Šafarik as *abschneiden*, *abgeschnitten sein* (to cut off),⁴² Voja Radovanović expressed the idea that *urezati* means *rovašiti* = cut (saw) into, score, nick, notch, incise, and not to cut off.⁴³ However, other translators of the Law Code accept Daničić's interpretation that *urezati* (ѹрѣзати) means *desecare* (to cut off). As argument Daničić quotes five articles of the Code and a fragment from *The Life of Saint Simon*, written by the King Stefan the First Crowned, where the verb *urezati* has a meaning of *desecare*.⁴⁴

According to Aleksander Solovjev, the verb *urezati* (урезати) in modern Serbian is derived from върѣзати = *in-sculpere*, while the old verb ѹрѣзати means *abscindere*. For example, the Old Serbian version of the New Testament translates the wording from the Gospel according to Saint John: "Then Simon Peter having a sword drew it, and smote the high priest's servant, and cut off his right ear. The servant's name was Malchus" (Σίμων οὖν Πέτρος ἔχων μάχαιραν εἶλκυσεν αὐτήν, καὶ ἐπαιστε τὸ τοῦ ἀρχιερέως δούλον καὶ ἀπέκοψεν αὐτοῦ τὸ ὡτίον τὸ δεξιόν· ἦν δὲ ὄνομα τῷ δούλῳ Μάλχος),⁴⁵ as ѹрѣза εμογ ѹχо or στρѣза εμоу ѹчо,⁴⁶ what corresponds to the Greek term ἀπέκοψε and Latin *abscidit*.⁴⁷

Much more confusion has been sown on the interpretation of the word *povodčija* (повођачја). Šafarik, who disposed with only three transcripts, read from the Hodoš text *podvočije* (подвочије) and from the Šišatovac copy *podočije* (подвчије), and he understood those two terms as being in connection with the Serbian word *oči* (очи) = eyes, so he translated the final lines of article 69 as "let

42 Ed. Kucharski, *Antiquissima monumenta*, pp. 175, 197. Šafarik used the same term translating other articles of Dušan's Law Code which mention a verb *urezati* (articles 21, 53, 54, 162).

43 V. Radovanović, "Dve omaške u tumačenju Dušanova zakonika" ["Two Slips in Interpretation of Dušan's Law Code"], *Godišnjak Skopskog filozofskog fakulteta* 3 (1937), p. 151. The author did not give any philological explication.

44 Daničić, *Rječnik*, vol. III, p. 380. See the Chapter 18, section 2.

45 The Gospel according to Saint John 18, 10. Narrating the same story, Matthew and Luke do not mention the names. Matthew 26, 51: "And, behold, one of those who were with Jesus stretched out his hand, and drew his sword, and struck a servant of the high priest's and smote off his ear" (καὶ ἴδοὺ εἰς τῶν μετὰ Ἰησοῦ ἐκτείνας τὴν χεῖρα ἀπέσπασε τὴν μάχαιραν αὐτοῦ, καὶ πατάξας τὸν δούλον τοῦ ἀρχιερέως ἀφείλεν αὐτοῦ τὸ ὡτίον). Luke 22, 50: "And one of them smote the servant of the high priest, and cut off his right ear" (καὶ ἐπάταξεν εἰς τις ἔξ αὐτῶν τὸν δούλον τοῦ ἀρχιερέως καὶ ἀφείλεν αὐτοῦ τὸ δεξιόν).

46 D. Daničić, *Nikolsko jevanđelje* [Gospel of Monastery of Saint Nicholas] (Belgrade 1864), pp. 64, 117, 264.

47 Solovjev, *Zakonik cara Stefana Dušana*, pp. 189, 232.

his eyebrows be singed" (*die Augenbraunen weggesengt werden*).⁴⁸ Daničić, in his *Dictionary from Serbian Literary Antiquities*, introduced the word *podočje* (подоčје, f. pl. *cilium*), translating it as "eyelashes" (*trepavice, мрепавице*).⁴⁹ The wording "let his eyelashes be singed" (*da se osmude trepavice*), according to Daničić's interpretation, was accepted by Novaković in his first edition of the Code⁵⁰ and in Zigelj's Russian translation (и да выжгутся ему рѣсницы).⁵¹ In his second edition of the Code (1898), Novaković wrote "i opaljen ѳe biti ispod očiju" ("let him be singed under the eyes"),⁵² and in Burr's translation we read "let him be singed upon the face".⁵³ Novaković's interpretation was repeated in the Slovenian translation of the Code by Metod Dolenc (1929)—"nej ga osmode pod očmi". Writing a criticism of Dolenc's translation, Marko Kostrenčić made a very important correction: *povodčija* comes from the verb *povoditi* = *ducere*, and it means "leader" ("let the leaders be singed").⁵⁴ Undoubtedly this interpretation is correct, because in the best transcripts of the Code (Struški, Prizrenski, Atonski) we find the word *повоd'чије*, the plural from the term *повоd'чија*.⁵⁵ Kostrenčić's opinion has been accepted by the majority of modern scholars.⁵⁶

The legislation of other feudal States has a similar provision. For example, the Ragusan Statute (1272) provides punishment by death for leaders of conspiracies (*Qui fecerit compagniam per sacramentum vel per promissionem, quod probari possit, si fuerit caput et auctor ipsius companie, moriatur*).⁵⁷ An English Act from 1350 forbids all assemblies of villeins and punishes the abettors in the same way as perpetrators of high treason.⁵⁸

48 Ed. Kucharski, *Antiquissima monumenta*, p. 197.

49 Daničić, *Rječnik*, vol. II, p. 339.

50 S. Novaković, *Zakonik cara Stefana Dušana cara srpskog 1349 i 1354* (Belgrade 1870), p. 73.

51 Zigelj, *Zakonik Stefana Dušana*, *Priloženja* (Приложенія), p. 43.

52 Novaković, *Zakonik*, p. 189.

53 Burr, "The Code of Stephan Dušan", p. 211. As we already wrote, Burr's translation was made from the text edited by Stojan Novaković in 1898 (Novaković's second edition of the Code). See Burr, "The Code of Stephan Dušan", p. 198.

54 M. Kostrenčić, "Dr Metod Dolenc, Dušanov zakonik (rec.)", *APDN* 29 (1926), p. 474.

55 Solovjev, *Zakonik cara Stefana Dušana*, pp. 232–233.

56 Taranovski, *Istorija*, vol. II, p. 129; Janković, *Istorija*, p. 84; Solovjev, *Zakonik cara Stefana Dušana*, p. 233; Šarkić, *Srednjovekovno srpsko pravo*, p. 99.

57 *Liber statutorum civitatis Ragusii VI*, 2, *De hiis qui faciunt compagnias; Statut grada Dubrovniaka*, p. 324.

58 D. Lapčević, "Sebri nisu imali pravo na sabore" ["Commoners Had No Right on Councils"], *Prosvetni glasnik* 29 (1929), p. 750.

5 A Fugitive Serf

Article 201 of Dušan's Law Code, preserved only in the late Rakovac transcript, commands: "If a serf flee anywhere from his lord to another land, or to the Tsar's, where his master find him, let him brand him and slit his nose and assure that he is again his, but let him take nothing from him" (Меропъхъ ако поетъгне къде вт своего господара оу ино зем'ли или оу царевъ, где га обрѣте господарь неговъ, да га юмѣдїи инос мѣ раз'пори и зем'чи да е отпеть еговъ, а ино ницио да мѣ не оузв'ме).⁵⁹ It is interesting that a lord had no right to seize any of his villein's property.

In articles 140 and 141 ("Of receiving men", *О прѣемани чловѣка*), the Code proceeds to forbid the crime of receiving and harbouring fugitive serfs, and to bind them more irrevocably to the land. The perpetrator shall be punished "as a traitor" (да се каже ... како и невѣр'ныкъ),⁶⁰ meaning confiscation of property.⁶¹

Enticing and helping a villager to flee anywhere from his lord to another land was a crime called *provod*, *prevod* (проводъ, прѣводъ) or *prejem ljudski* (прѣемъ людъскии).⁶² *Provod* was mentioned for the first time in King Stefan Dragutin's chrysobull to the monastery of Hilandar (1276–1281), as one of the so-called "King's (or Tsar's) debts" (*carski dugovi*, царъски дългови), i.e. cases which were in the sphere of King's Court of Justice (*casus regales*), or what was in English law called "pleas of the crown".⁶³ Dušan's Law Code uses the terms *prejem ljudski* (articles 103 and 183), but Saint Archangel's chrysobull (1348)⁶⁴

59 Burr, "The Code of Stephan Dušan", p. 539; Novaković, *Zakonik*, p. 146; *Zakonik cara Stefana Dušana*, vol. III, p. 280.

60 Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, vol. III, p. 138.

61 See Chapter 5, section 1.

62 Cf. the contemporary English Ordinance of Labourers (1349) for a similar attempt to prevent the migration of peasants in a time of labour shortage, which in England, at least, was due to the Black Death. The terrible mortality from this plague completely disorganized the manorial system, which had hitherto depended upon a plentiful supply of labour born and bred within the manor. The plague accelerated and intensified forces that were already at work, and the result was a very serious depletion of the labour supply. The population of the manor was no longer sufficient to work the lord's estates. Consequently lords began to compete among themselves for such free labour as was available. This tempted servile inhabitants of manors to leave their holdings and become hired labourers. See Plucknett, *A Concise History of the Common Law*, pp. 32, 322–323.

63 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 268, 269. In some charters *provod* or *prevod* designates transport as well. See King Milutin's charters to the monasteries of Saint George (1300) and Hilandar (1303–1331). Ibid., pp. 317, 324, 376.

64 Edited by Mišić and Subotin-Golubović, *Svetozarhanđelovska hrisovulja*, p. 112.

and the treaty with Dubrovnik, exactly contemporary with the Code (1349),⁶⁵ return to the earlier expression *provod*. Article 93 of the Code, entitled “Of enticing men” (Ω προβογιενίη χλοεύτικα), forbids the wresting of somebody else's villager by a nobleman: “Whosoever entices a neighbour's man into another estate, let him repay sevenfold” (Кто проводи дроуженданаго чловека оу тауждую землю, да моя га даа самосед'маго).⁶⁶ This means that a lord who captured somebody else's serf had to hand him back and deliver six more villagers to the master of the kidnapped peasant. The manuscript gives an unclear reading: *проводи ... оу тауждую землю* (*provodi ... u tuždu zemļju*). *Toužda zemļja* (“another land”) in Dušan's Law Code usually means foreign country, abroad,⁶⁷ but in article 93 it seems that it designates “another estate” (as Burr translated, following Novaković's interpretation).⁶⁸

65 Edited by D. Ječmenica, *ssa* II (2012), p. 39.

66 Burr, “The Code of Stephan Dušan”, p. 216; Novaković, *Zakonik*, p. 73; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

67 According to the interpretation of Taranovski, *Istorija*, vol. II, p. 132, a nobleman could have a stake in helping a villager from somebody else's manor to flee abroad and then capture him in a foreign country and bring him back to his estate. Plundering of foreign countries and estates, without a declaration of war, was a common occurrence in the 14th century.

68 Novaković, *Zakonik*, p. 202. Cf. Solovjev, *Zakonik cara Stefana Dušana*, p. 253.

Crimes against the Church and Religion

The most important task of every mediaeval monarch, especially the Emperor (Tsar), was to keep purity of the faith. “The Tsar must distinguished himself in Orthodoxy and piousness and be renowned in his favour before God.”¹ In a charter of 1346, in which he announced his legislative work, Stefan Dušan declared that he “made the laws that one should have in accordance with the benefection of the true Orthodox faith” (възъсках нѣкоѧ добротителѧ и въсѣ истиинїе и православїиѣ вѣры, закони поставити такоже подобаєть имети).² Article 1 of the Code, entitled “Of Christianity” (О христіанствѣ), runs as follows: “First concerning Christianity. In this manner shall Christianity be purged” (На пръво за христіанство. Симъ зи и вѣра зомъ да се очисти христіанство).³ However, the Code does not prescribe a great number of crimes against the Church and religion, as might be expected from an Orthodox Tsar. Beyond any doubt, this is because the *Syntagma* of Matheas Blastares contains many provisions on that matter, and Dušan’s Law Code adds to them, following Byzantine ideals.

1 Renunciation of Orthodoxy

Matheas Blastares introduced at the beginning of his *Syntagma* as a prologue a short article entitled “On Orthodox Faith” (ΠΕΡΙ ΤΗΣ ΟΡΘΟΔΟΞΟΥ ΠΙΣΤΕΩΣ, Ο ВЪЕРЬ ПРАВОСЛАВНОИ).⁴ The article starts with the Announcement of the First Ecumenical Council: “We believe in one God” (Пръваго събора слогъ. Вѣрѹю въ юдиного Бога).⁵ After that Matheas Blastares exposes the first rule of the Second Ecumenical Council, the sixth and seventh rules of the Third Ecumenical Council, the first rule of the the Sixth Ecumenical Council, the first and second rules of the Holy Community Carthagine Council⁶ and a definition of

¹ See Chapter 8, section 3.

² Novaković, *Zakonik*, p. 5; *Zakonik cara Stefana Dušana*, vol. III, p. 430.

³ Burr, “The Code of Stephan Dušan”, p. 198; Novaković, *Zakonik*, p. 7; *Zakonik cara Stefana Dušana*, vol. III, p. 98.

⁴ Ed. Ralles and Potles, p. 46; ed. Novaković, p. 48.

⁵ Ed. Novaković, p. 48. Greek text does not have this announcement.

⁶ The Councils of Carthage were Church synods held during the 3rd, 4th, and 5th centuries in the city of Carthage in Africa. Matheas Blastares refers to the Council of 419. All canons formerly made in the 16 Councils held in Carthage, one at Milevis, and one at Hippo, that

¹⁰ At the end of the Chapter I-4, entitled “On that, how not to communicate with Jews” (Περὶ Ἰουδαίων, καὶ ὅτι μετ’ αὐτῶν κοινωνίαν ὄλως ἔχειν οὐ δεῖ, Ο Ιούδε-
ιχъ яко съ ними об’штеніа имѣти отнюдь не подобаетъ),¹⁰ Matheas Blastares

were approved of, were read, and received a new sanction from a great number of bishops, then met in the synod of Carthage. This collection of canons was often called the Code of Canons of the African Church.

⁷ Ed. Ralles and Potles, p. 49; ed. Novaković, p. 51.

⁸ Ed. Ralles and Potles, p. 49; ed. Novaković, p. 51.

⁹ Ed. Ralles and Potles, p. 57; ed. Novaković, p. 59. Cf. *Procheiron*, XXXIX, 33 et 34; *Cod. Iust.* I, 5, 22, a law promulgated in 531, by Emperor Justinian: *Divinam nostram sactionem, per quam iussimus neminem errore constrictum haereticorum hereditatem vel legatum sive fideicommissum accipere, etiam in ultimis militum voluntatibus locum habere praeincipimus, sive communi iure sive militari testentur*. Cf. I, 7, 3 (*Impp. Valentinianus, Theodosius et Arcadius A.A.A.*, a. 301) et I, 7, 4 (*Impp. Theodosius et Valentinianus A.A.*, a. 426).

¹⁰ Ed. Ralles and Potles, p. 308; ed. Novaković, p. 326.

mentions a case of dissuasion of Christianity, which is similar to renunciation: “If a Jew captures and circumcises a slave who is Christian or catechumen,¹¹ or has the impertinence to deprave a Christian way of thinking, he should be punished by death” (Ἐὰν Ἰουδαῖος Χριστιανὸν ἡ κατηχούμενον ἀνδράποδον κτήσηται, καὶ περιτέμη, ἡ τολμῆση τινὸς διαστρέψαι χριστιανικὸν λογισμὸν, κεφαλικῶς τιμωρεῖσθω, Ληστε Ιουδείνη Χριστιανίνα ή ογλασθένα γό ραβα στεγίτη ι οερθήτη, ή ι δρύζνετη κο ραζβρατити χριστιαν' скыи помысль, главн' да томимъ боудеять).¹²

2 Heresy

Heresy (αἵρεσις, ιερεσία, literally “sect, school”) is an opinion or doctrine contrary to Church dogma. As a term it was used by the Church Fathers to designate a sectarian or dissident teaching, sometimes that of pagans or Jews but mainly within Christianity. In mediaeval law, heresy was an offence against religion, consisting not of total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. The *Codex Iustinianus* already had a long chapter, entitled *De Haereticis et Manichaeis et Samaritis*, containing 22 laws against heretics, starting from Emperor Constantine (a law from 326) and finishing with Emperor Justinian (a law from 531).¹³

The *Procheiron* contains several laws against heathens, Manichaeans¹⁴ and Donatists¹⁵ and generally against all persons who “teach impious dogmas” (Οἱ διδάσκοντες τὰ ἀσεβῆ δόγματα). The laws threaten all those persons with capital punishment and confiscation of property. The children of pagans and heretics can inherit the property of their parents, but only if they accept Orthodoxy.¹⁶

¹¹ In ecclesiology, a catechumen (from Greek κατηχούμενος, “one being instructed”) is a person receiving instruction from a catechist in the principles of the Christian religion with a view to baptism.

¹² Ed. Ralles and Potles, p. 310; ed. Novaković, p. 328. Cf. *Procheiron*, xxxix, 31 et 32; *Epanagoge*, xl, 33 et 34; *Cod. Iust.* i, 10, 1.

¹³ *Cod. Iust.* i, v, 1–22.

¹⁴ Manichaeanism was a system of belief formulated by the Persian religious leader Mani (Μάνης). It was uncompromisingly dualistic (in which there appear two original principles fundamentally irreconcilable and opposed to one another), and grew out of Zoroastrianism.

¹⁵ Donatism, named after its primary teacher Donatus, is a rigorist sect that developed within the African Church in the early 4th century in the aftermath of the Great Persecution.

¹⁶ *Procheiron*, xxxix, 27–30, ed. Zepos, vol. II, p. 219.

Matheas Blastares' *Syntagma* has a very detailed Chapter A-2, under the title "On heretics and how those who convert from heresy should be accepted" (Περὶ αἵρετικῶν, καὶ ὅπως χρὴ δέχεσθαι τοὺς ἐξ αἱρέσεων ἐπιστρέφοντας, Οἱ ἡρετικὲς καὶ κακό ποδοβαίεται πρινεμάτι οὐκετί σε).¹⁷ After exposing numerous characteristics of different heresies, the author quotes a few secular laws, almost taken verbatim from the *Basilika*. Various imperial laws (Καὶ παρὰ διάφόρων δέ γε βασιλικῶν νόμων, Ι οτι ραличныих же царскыиих законъ) forbid heretics from inheriting either estates of bishops and clerics, or of common Christians, even being their children. Children of heretics that became Christians have the right to claim a dowry.¹⁸

¹⁷ Ed. Ralles and Potles, pp. 57–75; ed. Novaković, pp. 59–78.

18 *Iust. Novella cxv, 14–36; Basilika xxxv, 8.*

19 *Basilika*, I, 1, 22.

20 *Basilika*, I, 1, 29.

21 Heretics called Montanists were followers of a certain Montanus who preached in Phrygia in the 2nd century. Their theology did not differ substantially from orthodoxy, although some Church Fathers accused the “thick-witted Montanist” of teaching the doctrine of the identity of the members of the Trinity.

22 *Basilika*, I, 1, 33.

23 *Basilika*, I, 1, 28.

- “Wives of heretics should be denied the legal privileges granted to Orthodox consorts” (Ἐκβαλλέσθωσαν δὲ καὶ αἱ αἱρετικαὶ γυναῖκες τῶν δεδομένων προνομίων ταῖς ὄρθοδόξοις, Δα измѣтаютъ же се и еретическыи жены даиemy-ихъ прѣдъ оузыакон'иихъ обычай православныиимъ женамъ). “They should not have an advantage over previous lenders of their husbands, as the Orthodox wives have, in spite of the largeness of their dowry and gifts before marriage and on account of marriage” (οὐ γὰρ περὶ τὴν ἰκάνωσιν τῆς προικὸς αὐτῶν καὶ τῶν προγαμιάιων δωρεῶν προτιμηθήσονται τῶν προτέρων δανειστῶν τοῦ ἀνδρὸς, ὥσπερ αἱ ὄρθοδοξοι, οε εο ο наврьшениι прикие ихъ и прѣдбрачныиихъ даровъ прѣд'поч'тогъ се прѣвѣшихъ дльжникъ моужа іакоже православныиє). “We allow heretics to be buried according to the law” (Ταῖς νομίμοις γε μὴν τοὺς αἱρετικοὺς ταφαῖς παραδίδοσθαι συγχωροῦμεν, Законныиимъ погреbeнiemъ ере-тикомъ прѣдан'иомъ бывати праштаиemy).²⁴

Testimonies on the existence of heretical movements in mediaeval Serbia are fragmentary and contain many lacunae, although the *Nomokanon* of Saint Sabba (1219) in three chapters exposes a long list of heresies, quoting the writings of the Church Fathers: Chapter 61, *Panarion* (Πανάριον, literally “medecine-chest”), a very large compendium of the heresies written by Saint Epiphanius, bishop of Salamis, Cyprus (Ἐπιφάνειος Κύπρου, c. 310/320–403); Chapter 62, *Story of Calumniators of Christians*, Three Writings (*Antirrhetici*) referring to the refutation of iconoclasm, written by Nikephoros I (Νικηφόρος Α', 758–828), Ecumenical Patriarch of Constantinople (from 12 April 806 to 13 March 815) and a treaty *More on Heresies and Heads of Heresies*, written by Sophronius I (Σωφρόνιος Α' Ἱεροσολύμων), Patriarch of Jerusalem (634–638); Chapter 63, Writing of Timothy (Τιμόθεος), presbyter (πρεσβύτερος) of the Great Church of Constantinople, to John (Ιωάννης), presbyter and treasurer of the Holy Virgin Church in Chalkeopratie, *On Heretics who Join to Christian Faith*.²⁵ However, those writings, taken from the Holy Fathers, do not reflect the real situation in mediaeval Serbia.

The first information on the existence of any heresy in mediaeval Serbia can be found in the *Life of Saint Simon*—a biography of Stefan Nemanja, written by his son and successor King Stefan the First Crowned. According to King Stefan's story “one of his [Nemanja's] true-believing soldiers came to him, and fell on his knees, and with gentleness and great humbleness told to him ... that the evil faith and cursed heresy is already striking root in your State” (Пришъдышоу же кеди номоу ѿтъ ордово вѣрныхъ воинъ твоего, и поклонъ колѣнъ свои съ оумилениемъ

²⁴ *Basilika*, IV, 1, 34. *Syntagma*, ed. Ralles and Potles, pp. 74–75; ed. Novaković, pp. 77–78.

²⁵ Ed. Petrović, pp. 354b–394a.

и смиренiemъ многомъ глаголаше юмоу ... юже не любецаша ти вѣра и тръклетаяа юреся, юже оукорбнашаут се въ владычестви твоемъ). Stefan Nemanja “as soon as he knew that odious and damned heresy took roots in his State, called without hesitation his Archiereus Jephtimios and monks with their superiors, and honourable priests, and his lords, great and small” (Си же прѣподобныи свѣты мои господинъ ни мали злак’снѣвъ, скоро призывавъ своего архіерея юев’димна глаголема и чрн’це съ игоумени своими и честныи иерене, стар’це же и вел’моуже своє шть мала и до велика ихъ).²⁶ During a session of the Council, a nobleman’s daughter married to a heretic was brought as a witness. After consulting his lords, spiritual and temporal, Nemanja decided to send against the heretics his “glorious armed forces” (посла на ние въврѹживъ шть слав’ныихъ своихъ):

Some of them [the heretics] were burned, the second were punished by different penalties, and the third were deprived of their property; their homes and their estates were confiscated and distributed to the leprous and poors. Their teacher and superior was punished by cutting off the tongue in his throat, because he does not confess Christ, Son of God. And he put to the torch his satanic books, and exiled him [heretic teacher and superior] ... And he [Nemanja] eradicated completely this damned religion, not to be mentioned in his State.

и швьниихъ иждене и дроугыхъ казнами различными посаذا иныхъ вѣжемъ лѣствии шть владычествияа своего, и домове ихъ и имѣниа ихъ. в’се съвъ коупивъ раздро та проискажен’ныи и ницинии. оучителю же и начел’никоу ихъ юзыкъ оурѣза оу грѣтани юго, не исповѣдаюци Христа сына Божиа. и книги юго, нечъ стивыни иждег’ и того въ из’гнание створии ... и шьноудь искорѣнии проклеетою тоу вѣроу, такоже ни поменовати се юи штьноудь въ владычествѣ юго.²⁷

Although this testimony of our hagiographer can be considered trustworthy, questions arise: first, which heresy does the author refer to? The fact is that King Stefan the First Crowned neither mentioned a name nor described the teaching of any existing heresy of that epoch. However, knowing the religious circumstances in the Balkans, the majority of historians think that the heretics mentioned in *The Life of Saint Simon* were Bogomils (Serbian Cyrillic

²⁶ Ed. Jovanović, p. 32. As we have already noted (Chapter 9, section 3.2), this assembly was considered as the first State council held in mediaeval Serbia. However, the exact date of the holding of the council remains unknown.

²⁷ Ed. Jovanović, pp. 34, 36.

Богомили or *Богумили*, literally “dear to God”, from Slavonic *Bog*, Богъ = God, and *mil*, миљ = dear).²⁸

Second, from a legal point of view, the much more important question is: why were some of the heretics burned (punished by death), while others were punished by confiscation of their property? What was their guilt, in criminal law that quality which imparts criminality to a motive or act and renders the person amenable to punishment? Some heretics were punished, as our hagiographer says, “by different penalties”, but of what type they were—corporal or pecuniary (fines)? Finally, were the heretics prosecuted or not? However, as we deal with a narrative source, we must accept the fact that the answers on these questions will remain unknown.

It seems that Nemanja's energetic action against the heretics successfully eradicated the Bogomils, and after that they did not represent a real danger in Serbia. Theodosios, the biographer of Saint Sabba, testifies that the Serbian Archbishop and his brother King Stefan the First Crowned punished heretics only by exile.²⁹ However, the situation changed in the 14th century when Ser-

²⁸ Bogomilism was a Christian or dualistic sect founded in the First Bulgarian Empire by the priest Bogomil during the reign of Tsar Peter I in the 10th century. It most probably arose in what is today the region of Macedonia. The Bogomils called for a return to what they considered to be early spiritual teaching, rejecting the ecclesiastical hierarchy, and their primary political tendencies were resistance to the State and Church authorities. This helped the movement spread quickly in the Balkans, gradually expanding throughout the Byzantine Empire and later reaching Kievan Rus', Bosnia ("Bosnian Church"), Dalmatia, Serbia, Italy and France (Cathars). The Bogomils were dualist and Gnostics in that they believed in a world within the body and a world outside the body. They did not use the Christian cross, nor build churches, as they revered their given form and considered their body to be the temple. This gave rise to many forms of practice to cleanse oneself through purging, fasting, celebrating and dancing. The Bogomils are identified with Messalianism in Greek and Slavonic documents from the 12th–14th centuries. The *Syntagma* of Matheas Blastares (Chapter A-2), for example, says that Bogomilian heresy is a part of Messalianism and that Bogomils refer to themselves like this ('Η δέ Βογουμίλων αἱρεσίς ... μέρος οὐσα τῶν Μασσαλιανῶν; Βογομιλίκατα ἡ ερεσίς ... η ιερότητα της Μασσαλιανής θρησκείας ... Βογούμιλοι σάμι οι παριζητούστε. Ed. Ralles and Potles, p. 66; ed. Novaković, p. 69). On Bogomilism, see F. Rački, *Borba Južnih Slovena za državnu neodvisnost. Bogomili i patareni* [Struggle of South-Slavs for State Independence. Bogomils and Patarenes] (Belgrade 1931), pp. 337–599; D. Obolensky, *The Bogomils. A Study in Balkan Neo-Manichaism* (Cambridge 1948); A. Solovjev, "Svedočanstva pravoslavnih izvora o bogomilstvu na Balkanu" ["Testimonies of Orthodox Sources on Bogomilism in the Balkans"], *Godišnjak društva istoričara Bosne i Hercegovine* 5 (1953), pp. 1–103; D. Dragojlović, *Bogomilstvo na Balkanu i u Maloj Aziji, II. Bogomilstvo na pravoslavnom Istoku* [Bogomilism in the Balkans and in Asia Minor, II. Bogomilism in the Orthodox East] (Belgrade 1982); S. Ćirković, "Bogomili, Bogumili", in *LSSV*, pp. 51–52.

²⁹ Ed. Daničić, p. 113.

bian monarchs conquered Macedonia, a cradle of heresy, and heretical danger became actual again. The heretics are referred to as *Babuni* (Бабуни, singular = Бабунинъ), which originally meant superstition, superstitious person (Common Slavic *Бабонъ*, *Бабоунъ*, *Бабона*). The word was for many years a puzzle.³⁰ It is now known that *Babuni* is another name for Bogomils; it occurs in the *Nomokanon* of Saint Sabba, where we find a heading 42, “On Messalians,³¹ who are now called Bogomili–Babuni” (О Масалианехъ иже соуть нынѧ глаголеми Богомили, Бабуны).³²

An inscription from 1329 testifies that *Babuni* were present in great numbers in 14th-century Serbia. The text says that King Stefan Dečanski “sent his by God given son, Crown Prince [so-called “Young King”] Stefan [Dušan] against impious and foul *Babuni*. And he [Stefan Dušan], with the help of God and the great army, won a battle and shed a lot of blood and captured innumerable heretics” (И сына своего Богомъ дарованнаго Стефана нарече да је младыи по нємъ краљ, и послал њего на безвожные и поганые бабоуны. Онь же шьд съ помощью съ многы вон створи побѣдоу на нихъ, и многије крви пролика, и безчисльные падни).³³ In

³⁰ Scholars have presented different opinions concerning the origin of the word *Babuni*. The majority think that the term comes from the old expression for superstition, or from *Baba Yaga*, a Slavonic supernatural being who appears as a deformed or ferocious-looking old woman. At the same time the word means “midwife”, “sorceress” or “fortune teller”. Beside Slavonic languages, such as Serbian, Croatian, Russian, Ukrainian, Polish and Chech, the word is known in Hungarian and Romanian as well. Šafarik translated *Babub* as *Zauberer* (magician, sorcerer, wizard) and put it in connection with the Hungarian word *babonaság* = magic, sorcery, witchcraft (what is, according to him, a loan-word from Slavonic languages) and Polish *zabobon* = superstition (Kucharski, *Antiquissima monumenta*, p. 186). According to other views it could come from the libertine Christian Gnostic sect of Asia Minor called *Borborians* or *Borborites* (Greek Βορβοριανοί, from the Greek word βόρβορος = mud) or the Semitic word *baba* (in Serbian *baba* means grandmother). Toponyms which retain the name *Babuni* include the River *Babuna* and the mountain of the same name in North Macedonia. See S. Ćirković, “Babuni”, in *LSSV*, pp. 27–28.

³¹ Messalians (Μεσσαλιανοί, from Syriac *mšlyn'*, “praying people”), also termed Euchitai, formed an ascetic and pietistic movement, probably originating in Mesopotamia in the 4th century before spreading to Syria, Egypt, and Asia Minor. The Messalians never formed an institutionalized sect, nor did they develop any doctrine or create a hierarchy. They expressed the feelings of radical groups within Christianity; they believed that a demon is encamped in man's soul and that neither baptism nor other sacraments suffice to expel him; only “baptism of fire” or spiritual purification can liberate men from the power of evil. See T.E. Gregory, “Messalianism”, in *ODB*, pp. 1349–1350. However, Messalians cannot be identified with Bogomils.

³² Ed. Petrović, p. 205b; ed. Petrović and Štavljanin-Dordević, p. 602.

³³ Stojanović, *Stari srpski zapisi i natpisi*, vol. I, p. 25. According to the author it was people

spite of the “great victory” of the “Young King”, the *Babuni* remained a real danger for an Orthodox Tsar. Profoundly aware that the victory from his youth did not completely repress the *Babuni*, Tsar Dušan introduced in his Code two articles regarding heretics:

Article 10, entitled “Of heretics” (Ѡ єретизє):

And if any heretic be found living among Christians, let him be branded on the face and driven forth. And whosoever shall harbour him, he too shall be branded.

И ктѹ се ѿбрѣте єретигъ, живѣ въ христїанѣхъ, да се же же по ѿбразѹ, и да се прожене; ктѹ ли га имѣ таити, и тѣзы да се же же.³⁴

Article 85, entitled “Of heretical utterance” (Ѡ речїи бабоун’скои):

Whosoever utters heretical words,³⁵ if he be noble let him pay 100 perpers; and if he be a commoner, let him pay 12 perpers and be flogged with sticks

Ктѹ рече бабоун’скуј речь, ако боудѣ властелин да плати, ѩ, перъперъ; аци али боудѣ себѣ да плати, вї, перъперъ, и да се вїе стапїи).³⁶

Interpretation of these two articles shows that the Tsar’s goal was not only to punish heretics but to prevent the Bogomil’s propaganda as well. Even the Code did not use the term Bogomils: article 10 says simply heretics and article 85 *Babuni*.

Bosnia who were responsible for the demolition of Saint Nicholas’ monastery in the county of Dabar (Serbian Cyrillic *Дабар*, part of the Principality of Zahumlje, later Hum).

34 Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, p. 14; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

35 The expressions translated as “heretical utterance” and “heretical words” are in the original text *babunská reč* = babun’s word. Šafarik, who thought that *Babub* meant *Zauberer* (sorcerer), translated the title of article 85 as *Von zauberischer Rede* and later “Wer zauberische Reden ausstößt” (Kucharski, *Antiquissima monumenta*, p. 186). His interpretation was accepted by W.A. Maciejowski, who translated the first sentence of article 85 as “Kto ozarodziejskie wymania słowa czarując” (*Historya*, vol. VI, pp. 305–385). See also M. Petović, “Babunska reč u Zakoniku cara Stefana Dušana 1349 i 1354” [“Babun’s Word in the Law Code of Tsar Stefan Dušan 1349 and 1354”], *Arheografski prilozi* 25 (2003), pp. 143–161.

36 Burr, “The Code of Stephan Dušan”, p. 214; Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. I, pp. 106 and 184; vol. III, p. 122.

Branding on the face, prescribed by article 10, meant that a heretic got a brand (stamp, stigma) on his cheek, and after branding he had to be exiled. In case he wanted to come back it would be very simple to recognize him. The same penalty was regulated for his accomplice or aider (“whosoever shall harbour him”).

It seems that Tsar Dušan and the Serbian Orthodox Church were frightened of the Bogomil’s propaganda, because article 85 punishes “*Babun’s words*”. Their hostility towards *Babuni* is evident from some documents using insulting expressions to describe this sect. In an old manuscript of *The Synodikon of Orthodoxy* (Συνοδικόν τῆς Ὁρθοδοξίας),³⁷ belonging to the Holy Trinity monastery near Pljevlja,³⁸ dating between 1380 and 1395, there is an anathema against “evil heretics accursed *Babuni*, who falsely call themselves Christians and mock at our Orthodox faith” (зли љеретици трыклети бабоуние нарицајуаште се лъжикрстите и роугајуаште се нашеи правъти вѣрие). All persons who believe in “*Babun’s faith*” (въ бабоунскому вѣрю), all those who know that some are *Babuni* and in spite of that are harbouring and feeding them, and all those who know that some individuals are *Babuni* and do not curse them—all those categories of people were anathematized.³⁹

The Bogomil’s teaching was very dangerous for the official Church. In their monarchian dualist story, Bogomils taught that God had two sons, the elder Satanail and the younger Michael. Satanail rebelled against the father and became an evil spirit. He created the lower heavens and the Earth and tried

37 *The Synodikon of Orthodoxy* is a document read on the first Sunday of Lent (a shortened form of the Anglo-Saxon word *lencten* = the spring, from *lang* = long, so-called from the lengthening of the days in the spring; Greek Μεγάλη Τεσσαρακοστή or Μεγάλη Νηστεία meaning “Great 40 Days” and “Great Fast”; Latin *Quadragesima*, “Fortieth”, the period of 40 weekdays from Ash Wednesday to Easter, observed in Christian churches by fasting and penitence to commemorate Jesus’ fasting in the wilderness) in the Orthodox Churches of Greek rite. It celebrates the restoration after the iconoclast crisis in Byzantium, and a victory over the iconoclasm (from Greek εἰκόνοκλάστης, literally “imagedes-troyer”) from 843. On this occasion, “Many Years” (*mnogaja ljeta*) was read as the blessing for living persons and “Memory Eternal” (*večnaja pamjat*) for the dead strugglers and leaders of the Orthodox Church, while the heretics were accursed. See A. Kazhdan, “Synodikon of Orthodoxy” and P.A. Hollingsworth, A. Kazhdan, and A. Cutler, “Triumph of Orthodoxy”, in *ODB*, pp. 1994 and 2122–2123, and N.R. Sindik, “Synodik”, in *LSSV*, pp. 668–670.

38 Pljevlja (Serbian Cyrillic Пљевља) is a town and a centre of the Pljevlja Municipality located in the northern part of Montenegro. In 2011, the Municipality of Pljevlja had a population of 30,786, while the city itself had a population of about 19,489.

39 See V. Mošin, “Serbskaya redakciya sinodika v nedelju pravoslavlja. Teksti” (“Serbian Redaction of Synodikon in Orthodox Sunday Texts”), *VV* 17 (1960), pp. 278–353.

in vain to create man, though in the end he had to appeal to God for the Spirit. After creation Adam was allowed to till the ground on condition that he sold himself and his posterity to the owner of the Earth, Satanail. In order to free Adam and his offspring, Michael was sent in the form of a man, becoming identified with Jesus Christ, and was "elected" by God after the baptism in the Jordan. When the Holy Ghost appeared in the shape of the dove, Jesus received power to break the covenant in the form of a clay tablet (*χειρόγραφον*) held by Satanail from Adam. He had now become the angel Michael in a human form, and as such he vanquished Satanail, and deprived him of the suffix *il* (meaning God), in which his power resided. Satanail was thus transformed into Satan. However, through Satan's machinations the crucifixion took place, and Satan was the originator of the whole Orthodox community with its churches, vestments, ceremonies and fasts, with its monks and priests. This material world being the work of Satan, the perfect must eschew any and every excess of its pleasure, though not so far as asceticism.

The Bogomils taught that prayers were to be said in private houses, not in separate buildings such as churches. Ordination was conferred by the congregation and not by any specially appointed minister. The congregation were the "elect", and each member could obtain the perfection of Christ and become Christ. Marriage was not a sacrament. Bogomils refused to fast on Mondays and Fridays, and they rejected monasticism. They declared Christ to be the Son of God only through grace, like other prophets, and that the bread and wine of the Eucharist were not physically transformed into flesh and blood; that the Last Judgment would be executed by God and not by Jesus; that images and the cross were idols and the veneration of saints and relics idolatry. Their disbelief in anything that is created with materialistic and governmental goals led Bogomil followers to refuse to pay taxes, to work in serfdom, or to fight in conquering wars. The enemies and contemporaries of the movement interpreted this rejection of the feudal social system as creating disorder, even as the destruction of the State and Church.

Some of those ideas could be attractive, especially for an exploited class of commoners. An Orthodox did not have to accept the complete Bogomil teaching, but rather some of its elements—so-called "*Babun's word*". That was the reason why the penalty was not so severe as it is in article 10: a fine of 100 perpers for a noble and 12 perpers and flogging for a commoner.

Copyists of the Code from the 16th and 17th centuries, when Bogomilism had completely disappeared in Europe, did not understand the word *Babun*, and they replaced it with other expressions. The Ravanitza transcript (between 1650 and 1687) has a title "Of an inappropriate word" (*За неприкладнъ ъречъ*) and the text "If someone utters to anyone an evil and dishonorable word" (*Аще*

кто комъ речет злъ и вез'чественъ рѣчъ).⁴⁰ The so-called manuscript from Sofia (second half of the 17th century) has a title “Of a dishonest word” (*За неподленъ речъ*), and the same text as the Ravanitzia copy.⁴¹

3 Conversion to Catholicism and Catholic Propaganda

Provisions of Dušan's Law Code use the word “Christian” in the sense of a member of the Orthodox Church, while Roman Catholics were referred to as “Latins”, “Latin Heretics”, *azymistvo* (“unleavened bread”), “Half-believers” (*poluverac*), and “Heterodox” (*inoverac*). Similar to the Code, a long list of nations written in the 13th century divided all nations into three groups: a) Orthodox, such as Greeks, Bulgarians, Serbs, Russians, Georgians, etc.; b) Heterodox, being Germans, Hungarians, Croats, Bohemians, Poles, etc.; c) Infidels, like Jews, Turks, Saracens (Arabs), etc.⁴² Roman Catholics acted in the same way. They called Greek Orthodox *schismatici* (*schismatics*) = guilty of schism (Greek σχίσμα, from verb σχίζω, meaning I tear, rend, split, slit, cleave)—an offence of causing the division of the Church into two parts (a split in the Christian community).⁴³ Poland and Croatia were considered *antemurale Christianitatis*, although further to the east stood Russia and Serbia.⁴⁴ Such terminology indicates a great intolerance existing between the Greek Orthodox and Roman Catholic Churches of that epoch.

However, in mediaeval Serbia there lived a great number of Roman Catholics, and their legal position was not unfavourable. Ragusan merchants and Saxon miners were both Roman Catholics, and they got numerous privileges from monarchs personally. Among the King's and Tsar's noblemen we can find Roman Catholics, such as German mercenaries in the army and court dignitaries from the maritime towns of Kotor, Budva and Bar. Roman Catholics lived in their colonies in towns, having their churches and priests,⁴⁵ and they could

⁴⁰ Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 316.

⁴¹ Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 378.

⁴² Lj. Kovačević, “Nekoliko priloga za crkvenu i političku istoriju Južnih Slovena, I–V” [“Some Contributions to the Church and Political History of the South-Slavs, I–V”], *Glasnik sud 63* (1885), p. 8.

⁴³ See J. Meyendorff, “Schism”, in *ODB*, pp. 1850–1851.

⁴⁴ Cf. Taranovski, *Istorija*, vol. I, p. 107, note 1.

⁴⁵ Marin Žaretić, Roman Catholic Archbishop of Bar (архиепископ Марин), and his family got hereditary estates from Serbian King Uroš and his son Milutin (*SSA 6* [2007], p. 12). Tsar Dušan's chrysobull to the monastery of Saint Archangels mentions “Latin priests who are in the village of Šikla” (и попове латиньци кои сују Шикла), in the region

freely profess their religion. How such tolerance between two churches could be explained?

Stefan Dušan, as an Orthodox Emperor, hardly tried to stop Catholic propaganda, which was extremely strong during his reign. Pope Clement VI (1342–1352) tried in 1343 to subordinate the Holy Mountain and the whole of Serbia to his spiritual domain, and Franciscan monks (*Friars Minor, Ordo fratorum minorum*) restarted their activities in Bosnia. In such circumstances, under the influence of the Patriarch and Greek monks from the Holy Mountain, Stefan Dušan prescribed in his Law Code four articles prohibiting conversion to Catholicism and Catholic propaganda.

First, article 6, “Of the Latin heresy” (Ѡ єреси латин'скон), runs as follows:

And concerning the Latin heresy, any Christians who have turned to unleavened bread, let them return to Christianity. And if anyone fails to obey and does not return, let him be punished as is written in the laws of the Holy Fathers.

И за єресь латин'скоую, цю се съ обратили христіане въ азїмиство, да се възврате впеть въ христіан'ство; ако ли се кто възвратив' се въ христіан'ство, да се каже како пише оу законикъ светыих апостольца.⁴⁶

In the Code, two terms were used for the confession of the Catholic religion: *azymistvo* and “Latin heresy”. *Azymistvo*, i.e. the unleavened bread (Greek ἀζυμος = unleavened, from ζύμη = leaven) used by the Armenian and Latin Churches in the eucharistic sacrifice based on the tradition that such bread was used at the Last Supper, at which Jesus instituted the Eucharist (εὐχαριστία, “thanksgiving”), a principal Christian liturgical service.

Why does the Code call Catholicism the “Latin heresy”, and yet a Catholic is not a heretic? And what does the wording “let him be punished as is written in the laws of the Holy Fathers” mean? This type of penalty is not clear, because neither the *Nomokanon* of Saint Sabba nor the *Syntagma* of Matheas Blastares contain penal law provisions regarding conversion to Catholicism. It is possible that the State Council, which promulgated article 6, made an allusion to the law exposed in the *Syntagma* of Matheas Blastares (A-1), which deprived of full

of Gornji Polog, today in Albania (edited by Mišić and Subotin-Golubović, *Svetoorhanedlovska hrisovulja*, p. 99).

⁴⁶ Burr, “The Code of Stephan Dušan”, p. 199; Novaković, *Zakonik*, p. 11; *Zakonik cara Stefana Dušana*, p. 100.

legal capacity all those who had renounced the Orthodox faith and become heretics. The law was taken from the *Procheiron* (xxxix, 34), and it repeats provisions from Emperor Justinian's law, promulgated in 531.⁴⁷ However, Justinian in the sixth century could not expect the Great Schism of 1054, and he aimed at heretics (*De Haereticis et Manichaeis et Samaritis*). But from the point of view of an Orthodox Tsar, an extensive interpretation of Justinian's law could consider Catholics as a sort of heretic, and that is the reason why the Code used the expression "Latin heresy".⁴⁸

Article 7, "Of the Latin heresy" (Ω ερεσι λατιν' скон) runs as follows: "And the Great Church⁴⁹ shall appoint protopops⁵⁰ in all cities and market towns to bring back Christians from the Latin heresy, who have turned to the Latin faith, to give them spiritual instructions, and that every man return to Christianity" (И да постави црквовъ велика пропоготвъ, по въсѣхъ градовѣхъ и тръговѣхъ да възврате христіане отъ ереси латин' скые, кои се съ въбратили въ въбръ латин' скону; и да имъ даде заповѣдь доучовнъ; и да се въсаки врати въ христіанство).⁵¹ Article 7 is in close connection with article 6, and it has the same title. It shows that the power of Rome in the Balkans was still redoubtable, that the Tsar should allocate the duty of reconversion to the Patriarch himself, without regard to the metropolitans and bishops.

Article 8, "Of Latin priests" (Ω латин' скомъ попвъ), reads: "And if a Latin priest convert a Christian to the Latin faith, let him be punished according to the laws of the Holy Fathers" (И попъ латин' скы, ако се наиде въбративъ христіанина въ въбръ латин' скону, да се каже по законъ светыхъ отъцъ).⁵² The penalty for the priest was not explicitly given. The meaning of the wording "according to the laws of the Holy Fathers" is not clear, because such a provision does not exist either in the *Nomokanon* of Saint Sabba or the *Syntagma* of Matheas Blastares.

Article 9 is entitled "Of half-believers" (Ω полѣвѣр' ци), and runs as follows: "And if anywhere a half-believer take a Christian woman to wife, let him be baptized into Christianity: and if he will not be baptized, let his wife and children be taken from him and let a part of the house be allotted to them, but he shall be driven forth" (И ако се наиде полѣвѣр' цъ оузынь христіаницъ; ако ѳзлюби да

⁴⁷ See above, title "Renunciation of Orthodoxy".

⁴⁸ Solovjev, *Zakonik cara Stefana Dušana*, p. 175.

⁴⁹ The expression "Great Church" (ἡ Μεγάλη ἐκκλησία) usually refers to the Patriarchate of Constantinople, but in the Code to the Serbian Patriarchate.

⁵⁰ I.e. "chief priests". See Chapter 6, note 17.

⁵¹ Burr, "The Code of Stephan Dušan", p. 199; Novaković, *Zakonik*, p. 12; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

⁵² Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 13; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

се кръсти оу христіан'ство; ако ли се не кръсти, да моу се оузм' жена и дѣца и да имъ даа дѣль ут коуксє; а внъ да се иждене).⁵³ The “half-believer” is a “Latin” (Roman Catholic), one who is not completely “Christian” (Orthodox) nor yet pagan.

The Code prohibits marriages between Catholics and Orthodox, although in Serbia before the promulgation of the Code there existed mixed marriages and consorts could retain their religion. A well-known example is Helen of Anjou (French *Hélène d'Anjou*),⁵⁴ spouse of Serbian King Stefan Uroš I (1243–1276), who was addressed in a Papal letter as *Helena regis Rassiae illustris* and *Carissime in Christo filiae Elenae ... lumini catholice fidei*.⁵⁵ It is obvious that she remained Catholic even after her marriage.⁵⁶ However, the Code mentions only a case when a Catholic takes “a Christian woman”. If he does not want “to be baptized into Christianity” (i.e. to accept the Orthodox faith), the penalty would be very rigorous (“let his wife and children be taken from him ... and he shall be driven forth”). Such a strict provision cannot be found in the sources of Byzantine canon law. But why was the opposite case—when an Orthodox man takes a Catholic woman as a wife—not regulated by the Code? First, we might suppose that a Catholic wife could easily accept the religion of her husband. According to a second hypothesis, the Code has accepted a rule that “presumptions arise from what generally happens” (*ex eo quod plerumque fit*): marriages between Catholic men, living in Ragusan and Saxon colonies, and Serbian Orthodox women were frequent, and the Tsar was afraid that Orthodox women might become Roman Catholics. It seems that marriages between Catholic women and Serbian Orthodox husbands were rare, and that is why the Code kept silent.

The purpose of article 21, entitled “Of the sale of Christians” (О проданїи христіан'сکомъ) is similar to those of articles 6, 7, 8 and 9. It runs as follows: “And whosoever shall sell a Christian into another and false faith, let his hands be cut off and his tongue cut out” (И кто продад христіанина оу инд' нєв'єр'ноу

⁵³ Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, p. 13; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

⁵⁴ In the charters of Charles I and Charles II of Anjou, Helen was called *consanguinea nostra carissima, cognata nostra, affinis nostra carissima*. See F. Rački, “Rukopisi tičući se južnoslovenske povijesti u arkivih srednje i donje Italije” [“Manuscripts Regarding South-Slavs History in the Archives of Middle and South Italy”], *Rad JAZU* 18 (1872), pp. 219–225.

⁵⁵ M. Purković, *Avignonske pape i srpske zemlje* [Avignon Popes and Serbian Lands] (Belgrade 1934), p. 11.

⁵⁶ On the life and personality of Queen Helen, see the recent work by M. Popović, *Srpska kraljica Jelena između Rimokatoličanstva i pravoslavlja* [Serbian Queen Helen between Roman Catholicism and Orthodoxy] (Belgrade 2010).

вѣрѹ да моѹ се рѹка вශече и езыкъ оуреже).⁵⁷ Here, a “Christian” is an Orthodox and “another and false faith” (*ina neverna vera*) is Catholicism. It is clear that the Code punishes with a very strict penalty the sale of an Orthodox to a Catholic. However, according to the wording of article 21 it seems that the slave trade in Orthodox cities was allowed *tacito consensu* (“with tacit consent”)—done with the unexpressed but presumed consent of a principal party.⁵⁸

4 Pagan Relicts

According to a story of Constantine VII Porphyrogennetos, the conversion of the Serbs to Christianity started in the 7th century, during the reign of Emperor Herakleios (610–641), just after their arrival in the Balkans. Constantine Porphyrogennetos wrote that “the Emperor [Herakleios] brought elders from Rome and baptized them [Serbs] and taught them fairly to perform the works of piety and expounded to them the faith of the Christians” (οὓς ὁ βασιλεὺς πρεσβύτας ἀπὸ Ῥώμης ἀγαγὼν ἐβάπτισεν, καὶ διδάξας αὐτοὺς τὰ τῆς εὐσεβείας τελεῖν καλῶς, αὐτοῖς τὴν τῶν Χριστιανῶν πίστιν ἔξεθετο).⁵⁹ However, it seems that complete conversion to Christianity ended in the 9th century, during the reign of Emperor Basil I (867–886), or more precisely between 867 and 874, when the sources mention the first Serbian Prince with a Christian name—Peter (Petar, Serbian Cyrillic Петар), a son of Prince Goynik (Gojnik, Гојник).⁶⁰

57 Burr, “The Code of Stephan Dušan”, p. 202; Novaković, *Zakonik*, p. 24; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

58 Although the Roman Catholic Church was against the slave trade, it was tolerated in the Balkans because the objects of the trade were Bosnian Bogomils. Trade agents were Ragusans. Bosnian rulers tried to stop that type of commerce, but without success. In a letter addressed to the Bosnian King Stefan Ostoya (2 September 1400), the Ragusans promised to cease the slave trade and punish rigorously everyone who sold and bought human beings (И ци кралевство ти пише за челиадь и за соль да ти ёзна величество ми смо послали заповѣдаје на тргѹ и да се личи по всемь тргѹ да никторъ не смѣт љубоватъ ни продаватъ челиадь ѹерь нѣсмо Ѿутни да никторъ тржи людьсцвми меси. Тико гѡдѣ ли се наиде да супротвѣти ѡчини таکози га киemo пѣдепсать да нега гледаје нитко не смѣт векси тога ѡчиниг). However, it seems that the Ragusans were not sincere and that they proceeded with the slave trade. Edited by R. Mihaljić, *ssa* 9 (2010), p. 161.

59 *De administrando imperio*, c. 32, 27–29, edition Moravcsik and Jenkins, pp. 154–155.

60 According to the hypothesis of Radojičić, “La date de la conversion des Serbes”, p. 253sq. Taking Christian names as the only reliable argument, J. Kovačević, *Istorija Crne Gore* [History of Montenegro] (Titograd [modern Podgorica] 1967), vol. I, p. 354, tried to prove that the Serbs converted to Christianity between 830 and 840, because in that period Constantine Porphyrogennetos mentions another Serbian Prince with a Christian name—Stephen (Stefan, Стефан), third son of Prince Mutimir. For a better understanding of the

Although Serbs lived for a long span of time as pagans we know practically nothing on their religion. The information given by Byzantine writers is generalized, and they describe Slavonic pantheism, not a particularly Serbian polytheism.⁶¹ However, in Serbian folk customs we can find up to the present day traces of pagan practices that existed side by side with Christianity. Some information, given by legal sources, is evidence that Serbian sovereigns and the Serbian Orthodox Church fought vigorously against pagan relicts. But it is impossible to say, due to the lack of relevant historical sources, whether pagans lived in Serbia as a detached category of the population, and in what numbers. It was evident that paganism was not allowed, but it is possible that in the rural regions of Serbia there lived people who retained a religion of their ancestors.

The *Nomokanon* of Saint Sabba in chapter 6⁶² mentions paganism, calling it “Hellenism” (Ελληνισμός, Ελληνεστέω),⁶³ and regarding it as one of “Four Mothers” of pre-Christian heresy, beside “Barbarism” (Βαρβαρισμός, Βαρβαρεστέω),⁶⁴ “Scythism” (Σκυθισμός, Σκυθεστέω)⁶⁵ and “Judaism” (Ιουδαισμός, Ιουδαιεστέω).⁶⁶

genealogy of the first Serbian sovereigns, see G. Ostrogorski, ‘Porfirogenitova hronika srpskih vladara i njeni hronološki podaci’ [‘Porphyrogenitus’ Chronicle of Serbian Rulers and its Chronological Data], *IČ* 1–2 (1948), pp. 24–29.

61 Cf. V. Čajkanović, *Mit i religija u Srbu. Izabrane studije* [Myth and Religion with Serbs. Selected Studies] (Belgrade 1941, reprint 1991). According to Čajkanović, the supreme Serbian god was Dabog (*da*, imperative of the verb *dati* = to give, and the noun *bog* = god), a black and lame god, master of hell and the dead, protector of cattle but also wolves. Although Dabog was considered as the “Serbian national god”, he is identical with Dabog, god of all Slavs (pp. 146–157). Dabog, Dažbog or Daibog (Даљбогъ, Дажбогъ, Дањвогъ) is one of the major gods of Slavic mythology, most likely a solar deity and possibly a cultural hero. He is one of several authentic Slavic gods mentioned by a number of medieval manuscripts, and one of the few Slavic gods for which evidence of worship can be found in all Slavic tribes.

62 Ed. Petrović, pp. 354b–356b.

63 According to Epiphanius of Salamis, Hellenism originates from Serug (Greek Σερούχ), great-grandfather of Abraham (*Genesis*, II, 20–26). The main characteristics of Hellenism are idolatry, politheism and fortune-telling (a fortune-teller is one who professes to tell future events in the life of another).

64 According to Epiphanius of Salamis, Barbarism belongs to the epoch from Adam to Noah, when the law was the will of every man.

65 According to Epiphanius of Salamis, Scythism refers to the time from Noah to the building of the Tower of Babel and later until Peleg and his son Reu. Peleg is mentioned in the Hebrew Bible as one of two sons of Eber, an ancestor of the Israelites, according to the “Table of Nations” in *Genesis* 10, II. Later on, Peleg and Reu moved into Scythian territories, i.e. East Europe. The name of the heresy originates from the Scythians (Greek Σκύθοι, Σκύθης), also known as Scyth, Saka, Sakae, Iskuzai or Askuzai, a nomadic people who dominated the Pontic steppe from about the 7th century BC until the 3rd century BC.

66 According to Epiphanius of Salamis, Judaism derived from Judah, who was the fourth son

However, this fragment was taken from Epiphanius of Salamis, and on that basis we may not conclude that pagans lived in mediaeval Serbia.

The Law Code of Stefan Dušan contains only two articles which refer to some traces of pagan religion:

First we have article 20, “Of Graves” (Ѡ гробѣх): “And if any person be taken out of his grave for magic and be burnt, any village that does this shall pay a fine [so-called “vražda”]; and if any priest shall come to it, let his priesthood be taken from him” (И людје које съ вљахов’ствомъ оузимлю из гробовоъ тере их съжиж; село које този оучини да плати вражд; ако ли боудѣ попъ на този дошъль да мѣ се оузме попов’ство).⁶⁷ The taking out of corpses from graves and burning them, the Code calls *vlahovstvo* (magic),⁶⁸ because the peasants believed that some persons were transformed in werewolves (*vukodlak*, *вукодлак*).⁶⁹ It was a superstition typical for all Balkan nations, and in Serbian it was preserved until the beginning of the 20th century.⁷⁰ As it was common that all peasants from the village attended, the Code prescribed a collective criminal liability—to pay so-called *vražda*, a fine that had to be paid for murder (500 perpers). If a parish priest was present at the event, his priesthood would be taken from him.

It is important to underline that transcripts from Bistrizza, Hodoš and Hilandar have the title “On heretics who burn the bodies of the dead” (Ѡ еретицихъ кој телѣса мртвихъ жегују),⁷¹ considering that all those superstitious people were heretics, perhaps Bogomils. The title of article 20 in the Athos transcript (in the Athos manuscript it is article 25) replaced the word “heretics” with “wizards, fortune-tellers” (Ѡ ресницихъ).⁷² The copyist used the Old Slavonic word *resnik*, derived from *res* = the truth⁷³ and *resan* = true, truthful.⁷⁴ As Jireček noticed, Bogomils called themselves *resnici*, i.e. “friends of the truth”.⁷⁵

of Jacob and Leah, the founder of the Israelite Tribe of Judah. By extension he is indirectly eponymous of the Kingdom of Judah, the land of Judea and the word “Jew”.

67 Burr, “The Code of Stephan Dušan”, p. 202; Novaković, *Zakonik*, p. 23; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

68 The word is obsolete. In modern Serbian the term *madiotičarstvo* (*мађионичарство*) is in use.

69 See Karadžić, *Srpski rječnik*, p. 79, article “Vukodlak” (der Bampyr, *vampyrus*).

70 M.D. Milićević, *Život Srba Seljaka* [Life of Serbian Peasants], Srpski etnografski zbornik. *Život i običaji narodni*, II odeljenje, I knjiga (Belgrade 1894), p. 326.

71 Novaković, *Zakonik*, pp. 23–24; *Zakonik cara Stefana Dušana*, vol. II, pp. 80, 118, 176, 240.

72 Novaković, *Zakonik*, p. 23; *Zakonik cara Stefana Dušana*, vol. I, p. 170.

73 In modern Slovenian, *res* means the truth or really, and *resen* means serious, grave, earnest, solemn.

74 See Mažuranić, *Prinosi*, p. 1244, article “Res”; Skok, *Etimologiski rječnik*, vol. III, p. 131, article “Resan”.

75 Jireček, “Das Gesetzbuch Stephan Dušans”, p. 211.

Toponyms which retain the names *Resnik* and *Resan* include the village *Resnik*, close to Belgrade, and the city of *Resen* (*Resan, Ресан*) in North Macedonia (the ancient Illyrian city of Damastion—Δαμάστιον).

Although article 20 reveals pagan relicts, the essence of the crime was profanation of graves and disrespect of dead bodies. The *Syntagma* of Mathaeas Blastares, in Chapter T-10, entitled “On grave plunderers” (Περὶ τυμβωρύχων, Ο γροβοριτελεχъ), exposed very severe dispositions on persons who robbed graves. Beside two ecclesiastical rules (the 66th rule of Basil the Great and the seventh rule of Gregory of Nyssa), we find seven laws also condemning the profanation of graves:

- “Whosoever steals from graves, let him be accused for sacrilege” (Οἱ ἀπὸ τῶν τάφων ὥλας ἀφαιροῦντες ὑποκείσθωσαν τῷ τῆς Ἱερουσαλίας ἐγκλήματι, Иже отъ гробовъ вештъ отимлюште, да подлежитъ свештенотаинствъ съгрѣшеню).⁷⁶
- “If anyone steals stones or columns or marble or any other thing from a grave, let him pay 20 *litres* of gold to public treasury” (Εάν τις ἀπὸ τάφου ἀφέληται λίθους, ἢ κίονας, ἢ μάρμαρα, ἢ ἄλλην οἰανδήποτε ὥλην, εἴκοσι λίτρας χρυσίου τῷ δημοσίῳ καταβαλλέτω, Аште кто отъ гроба отиметь камене, или стълпове, или мраморе, или иноу кою любо вештъ, двадесетъ литръ злата въ царину да платитъ).⁷⁷
- “Those who disinter and plunder dead bodies, if they do that with weapons, they shall be punished by death; if without weapons, they have to work in the mine” (Οἱ τυμβωρυχοῦντες, καὶ γυμνοῦντες τὰ τῶν τεθνεώτων σώματα, εἰ μὲν μεθ' ὅπλων, κεφαλικῶς τιμωροῦνται· εἰ δὲ χωρὶς ὅπλων, μέχρι μετάλλου, Иже гроби копаюште, и обнажаюште оумършихъ тълеса, аште оубо съ оружиемъ, главнѣ тометъ се; аште ли беъ оружія, даже до роуды).⁷⁸
- “To those who rob the dead in graves, let the hands be cut off” (Οἱ τοὺς νεκροὺς ἐν τοῖς τάφοις ἔκδύοντες χειροκοπείθωσαν, Иже мрътвые въ гробъ съвлачутъ, да оусѣкноутъ се имъ роукы).⁷⁹
- “If commoners displace holy relics or bones, let them be punished by death; but if they are eminent persons, let them be thrown into the dungeon or sent into the mine” (Οἱ λειψανα, ἢ ὅστâ μετακινήσαντες, εὔτελεῖς μὲν δύτες, ἀλλα τιμωροῦνται· ἔντιμοι δὲ, περιορίζονται, ἢ εἰς μέταλλα πέμπονται, Иже мости или кости прѣдвигшe, себри оубо соуште, краинѣ тометъ се; поутенъни же въ тъмници оубо въмѣтаютъ се, или въ роуди посилаютъ се).⁸⁰

⁷⁶ *Basilika*, LX, 23, 15. On sacrilege see Chapter x, 2, of this work, entitled “Crimes against property”.

⁷⁷ *Ibid.*

⁷⁸ *Basilika*, LX, 23, 3, 6.

⁷⁹ *Procheiron*, XXXIX, 57.

⁸⁰ *Basilika*, LX, 23, 3, 6.

- “It is not allowed to touch and seize the earthly remains of the deceased; it is allowed to move the persons who were provisionally buried into another place” (Οὐ δεῖ τὰ λείψανα τῶν τελευτῶντων ψηλαφάσθαι ἢ σκυλεύεσθαι· τὰ δὲ προσκαίρως ἀποτεθέντα μεταφέρειν ἔξεστι, Νέ ποδοβαίεται μοστὶ ουμιρούστιχ τοῖς οχαλοβατὶ ήτοι προμέτατη; Ηα βρέμε ότι πολογένηντε πρένοσιτι λέτη ιεστεῖ).⁸¹
- “Nobody may move a human body to another place without an Imperial order” (Μηδεὶς σῶμα ἀνθρώπινον χωρὶς κελεύσεως βασιλικῆς εἰς ἔτερον τόπον μεταφερέτω, Νικτοже тъло уловѣщѣе безъ повелѣнїа царскаго въ ино мѣсто да прѣноситъ).⁸²

However, the *Syntagma* of Matheas Blastares does not contain any provision on the burning of werewolves, prescribed by article 20 of the Code. Obviously it was a typical Balkan superstition unknown in Byzantium.

Second, we have article 109, “On poisoning” (Ω ὅτροεσται): “If a magician or poisoner be detected, let him be punished according to the Law of the Holy Fathers” (Магійникъ и штровникъ кои се наидѣ вѣлично, да се каже по закону свѣтихъ штъць).⁸³ According to the modern science of criminal law, poisoning belongs to crimes against the person, but mediaeval law considered it as a crime against religion, a kind of magic, i.e. an incantatory knowledge of natural forces. Under the influence of Byzantine law, the Code equalizes the magician and the poisoner, but only in the case when they were detected. The wording “if he be detected” (кои се наидѣ вѣлично) means that the poisoner would be punished only if the *corpus delicti* (the body or material substance upon which a crime has been committed), i.e. poison, elixir or “magic” herbs, was found in the possession of the accused person.

Punishment “according to the Law of the Holy Fathers” refers on the ample Chapter M-1 of the *Syntagma* of Matheas Blastares, entitled “On wizards, mathematicians [those who tell somebody’s fortune out of numbers],”⁸⁴ fortune-

81 *Basilika*, LX, 23, 3, 6.

82 *Basilika*, LV, 3, 14. See *Syntagma*, ed. Ralles and Potles, p. 475; ed. Novaković, p. 506.

83 Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 84; *Zakonik cara Stefana Dušana*, vol. III, p. 128. Article 109 exists only in the Struga, Prizren and Rakovac transcripts. Cf. N. Pavković, “Narodna religija u Zakoniku i vremenu cara Dušana” [“People’s Religion in the Code and Times of Tsar Dušan”], in *Zakonik cara Stefana Dušana, zbornik radova* [Code of Tsar Stefan Dušan, Proceedings of the Conference Held on 3rd October 2000, on the Occasion of 650 Years from the Promulgation] (Belgrade 2005), pp. 37–55, especially pp. 43–44.

84 Mateas Blastares (Chapter M-1, ed. Ralles and Potles, p. 359; ed. Novaković, p. 379) quotes a law, taken from the *Basilika* (LX, 39, 23), which orders that geometry is taught in public, but mathematics is condemned in public (Ταῦτη τοι καὶ ὁ νόμος φησίν· Ή μὲν γεωμετρία

tellers, and on astrologers, deluders, and also on sorceries, using of poisons and amulets” (Περὶ μάγων, μαθηματικῶν, καὶ μάντεων, ἵτι δὲ καὶ ἀστρολόγων, ἐπαιδῶν, ἀλλὰ δὴ καὶ γοητειῶν, φαρμακειῶν, καὶ περιάπτων, Ο βλήχβαχъ, ουγιτελныихъ, бајаљницивхъ, кеште же звездословицехъ, обавницивхъ, нь оубо и чародѣиехъ, отравницивхъ и бавезателихъ).⁸⁵ At the beginning Matheas Blastares exposes the 61st canon of the Sixth Ecumenical Council, which enumerates all types of sorceries, such as:

- *Fortune-tellers* are named as those who give themselves up to demons and are trying to predict the future, using symbols learnt from them.
- *Centurions* (Ἐκατόνταρχοι, Сътници)⁸⁶ are those who think more reasonably, and because of that consider that they are before others (ἐπίπροσθεν τῶν πολλῶν εἶναι, НАПРВДЬ МНОГИХЪ БЫТИ).
- *Ursari* (Ἀρκτοσυρόμενοι, Мечковод'ци, lit. “bear leaders” or “bear handlers”) are those who walk she-bears, hang vessels on them, cut their fur, giving both to women in order to chase away malady and those who are envious and bewitching. Others are carrying snakes in their bosom (обавници in Serbian translation) and with their “help” told fortunes (ἄλλοι δὲ ὄφεις περιφέρουσιν ἐγκολπίους, γοητείαν δὲ αὐτῶν μετιόντες, Ины же змје обносеть въ нѣдрахъ, обаваније тѣми проходеште).
- *Nephelomancy* (Νεφοδιῶκται, Облакогонци) are men who forecast the future by interpreting shapes and movements of clouds (Greek νεφέλη, Serbian oblak, облак = cloud).
- *Magicians* (Γόητες, Чародѣи) are those who sing David’s Psalms and mention names of martyrs and even the name of the All-undefiled Lady, and add to all that fortune-telling with demons’ help.
- *Those who make amulets* (τὰ φυλακτήρια, хранилишта). Others hang folded papers on children’s necks, written with fortuitous prayers and witchcrafts, and then tie them with red thread, in order to chase away any harm; they call that amulets and pendants (φυλακτήρια λέγουσι, καὶ περιάπτα, таже и хранилишта глаголиуть и наvezданіа).⁸⁷

The next lines are dedicated to the condemnation of sorceries pronounced by Church Councils and Fathers: John Chrysostom’s *Homily 21, On the Statues*

δημοσίᾳ διδάσκεται· ή δὲ μαθηματικὴ καταχρίνεται ώς ἀπηγορευμένη, Τѣмъ же и законы рече: Землемѣтре оубо народнѣс оучить се; оучитељноис же осуждаєть се яко отречен’но). Cf. *Codex Iustinianus IX*, 18, 2: *Artem geometriae discere atque exerceri publice interdit. Ars autem mathematica damnabilis interdicta est* (a. 294).

85 Ed. Ralles and Potles, pp. 356–362; ed. Novaković, pp. 378–382.

86 I do not understand what kind of magicians could be centurions.

87 Ed. Ralles and Potles, pp. 356–357; ed. Novaković, pp. 376–377.

(εἰκοστῷ πρώτῳ λόγῳ τοῦ βιβλίου τῶν ἀνδριάντων); Canon 24 of the Synod of Ancyra⁸⁸ (314); Rule 83 of Basil the Great; Canon 36 of the Council of Laodicea⁸⁹ (363–364); Rules 7, 65 and 72 of Basil the Great; Rule 2 of Gregory of Nyssa.⁹⁰ The chapter finishes with 14 laws against sorceries and poisoners, adopted mostly from the *Basilika*:

- “Whosoever practices sorcery with sacrifice, let him be executed by sword; and whosoever encouraged him by demands and money, let him be punished by imprisonment and confiscation of property” (Ο διὰ θυσιῶν μαντεύομένος, ξίφει τιμωρεῖθω· ὁ δὲ τοῦτον προτρέψαμενος παραχλήσει ἢ μισθῷ, ἐξορίᾳ καὶ δημεύσει ὑποκαίσθω, **Иже жртвами вльховути, мъченъ да томимъ боудеть;** **а иже оубѣдивши сего молбою или мъздою, заточению и распогу да подле-житъ.**)⁹¹
- “If poisoners are high dignitaries, let their property be confiscated; others to be punished by death” (Οἱ φαρμακοὶ, ἀξιωματικοὶ ὄντες, δεπορτατεύονται· οἱ δὲ λοιποὶ, εἰς κεφαλὴν τιμωροῦνται, **Обавници, сановници соуште, распогутъ се;** **прори же въ глашоу томими соуть.**)⁹²
- “The one who organized sorcery, converting demure ideas into a lust, or the one who imagined a treacherous attack on human salvation, let him be punished by exile and confiscation of property” (Ο ἐπιτηδευσάμενος γοητείαν ἔλκουσαν εἰς ἔρωτα τοὺς σώφρονας λογισμοὺς, ἢ κατὰ σωτηρίας ἀνθρώπων μηχανήσαμενος, δημεύσει καὶ ἐξορίᾳ τιμωρεῖται, **Оухытривиши зародбиство, привлажештес на въжделѣнїе цѣломѹдрьни е помысли, или на спасенїе чловѣчье къзиствовавъ, распомъ и изгнанїемъ да томимъ боудеть.**)⁹³
- “Nobody shall examine the one who has promised that he will practice sorcery, because sorcerers are punished by death” (Μηδεὶς ἐπερωτάτω τινὰ μαντικὴν ἐπαγγελλόμενον· οἱ γὰρ μάγοι κεφαλικῶς τιμωροῦνται, **Никто же да въпрашасть кого вльховать обештаваштаго се, вльвы бо глашнѣ томими соуть.**)⁹⁴
- “Those who are calling demons and hurting people, let them be executed by sword” (Οἱ εἰς βλάβην ἀνθρώπων δαίμονας ἐπικαλούμενοι ξίφει τιμωρείσθωσαν, **Иже на врѣдъ чловѣкомъ вѣсы призываюште, мъчень да томимы соуть.**)⁹⁵

88 Modern-day Ankara.

89 Ancient city in the province *Phrygia Pacatiana*, near the modern Turkish city of Denizle.

90 Ed. Ralles and Potles, pp. 357–361; ed. Novaković, pp. 377–381.

91 *Basilika*, LX, 39, 24.

92 *Basilika*, LX, 51, 34.

93 *Basilika*, LX, 39, 25.

94 *Basilika*, LX, 39, 26.

95 *Basilika*, LX, 39, 27.

- “To teach yourself prohibited things is the same as to teach somebody else” (“Ισον ἔστι τὸ ἀπηγορευμένα μαθεῖν, καὶ τὸ διδάσκειν, Ράβνοιςτε οὐκέτι οὐγρεύεται ηλαρναούχιτι σε ι οὐκέτι ιηογο ουγριτι).⁹⁶
- “If a husband positively finds that his consort is a sorceress, marriage shall be dissolved by repudium [breaking off of the contract of a marriage];⁹⁷ the same will happen if a wife establishes that for her husband” (Εὐλόγως ὁ ἀνὴρ, εὐρίσκων τὴν αὐτοῦ γαμετὴν φαρμακὸν, φεπουδίψ λύει τὸν γάμον ὥσαύτως καὶ ή γυνὴ τὸν ἄνδρα, Δοροιζεταις τοις μογκας οερετας εωνιο ψενογ οεανηιοφ, ραπουστομο ραζλρεσταετη βρακ, τακοζδε ι ψενα μογκα).⁹⁸
- “The one who gave a poison instead of medicine to a slave shall be punished in the same way as the one who caused death; the same if he gave impudently and recklessly poisoned the potion” (Ο φάρμακον ἀντὶ ιατρείας δούλῳ δεδωκώς ὑπόκειται τῇ αὐτῇ ποινῇ, ώς αἰτίαν θανάτου παρασχών ὥσαύτως καὶ ὁ προπετῶς διδοὺς φάρμακον, Ικε οερανον βε ιερετον βραγ' быи ραбоу давь, ποдлекитъ тоиждє κаζни ιако виноу сымрети подавь; τακοζδε ι ικε дръ-
зостн' и несымтрын' давь напоенїе).⁹⁹
- “Those who cause, using a poison, that someone loses his mind are guilty according to the law regulating insult” (Οι παραγρονήσαι τινα φαρμάκων ποιούντες, ἐνέχονται τῷ, περὶ ὕβρεως νόμῳ, Ικε ιζοумити се комоу отровою творе-
ште, ποвим'ни соутъ икес ι досадѣ 3акону).¹⁰⁰
- “According to the law of murderers, guilty is the one who makes poison mortal for man, or sells it, or possesses it” (Τῷ περὶ φονέων νόμῳ ὑπόκειται ὁ διὰ τὸ φονεύσαι ἀνθρωπὸν ποιῶν φάρμακον, ή πιπράσκων, ή ἔχων, Ικε ο ουγβιιцахъ
3акону ποдлекитъ икес 3а ικε οубити ψλовъка творе отравоу, или продаде,
или имѣк).¹⁰¹
- “If someone without a guilty mind gives to a wife anticonception agents and using that she dies, the one who gave it shall be punished by exile” (Εἰ καὶ μὴ κακῷ τις λογισμῷ παράσχοι γυναικὶ συλληπτικὸν, καὶ τελευτήσει ή λαβούσα, ἐξο-
ρίζεται ὁ παρασχών, Λаште и не 3л' ктo помысломъ подастъ жен' на 3ауетие,
и оумреть прииемшиа, 3атакаетъ се подавыи).¹⁰²
- “If someone, either free or slave, gives from any purpose a potion to a man or to a wife, either female slave or mistress, and they fall ill or die, the one who

⁹⁶ *Basilika*, LX, 39, 29.

⁹⁷ See Chapter 15, note 79.

⁹⁸ *Codex Iustinianus* V, 17, 8, 3.

⁹⁹ *Basilika*, LX, 39, 3.

¹⁰⁰ *Basilika*, LX, 21, 14.

¹⁰¹ *Basilika*, LX, 39, 3.

¹⁰² *Basilika*, LX, 39, 3.

gave it shall be executed by sword" (Εἴ τις ἐλεύθερος, ἢ δοῦλος, ἐπὶ οἰαδήποτε προφάσει δοίη πόμα εἴτε ἀνδρὶ, εἴτε γυναικὶ, εἴτε δούλῃ, εἴτε δεσποίνῃ, καὶ ἐκ τούτου ἀσθενήσαντες ἀποθάνοιεν οἱ δεξάμενοι, ξίφει ὁ παρασχῶν τιμωρεῖσθω, Λαშτέ κτο свободъ, или рабъ, о коиен любо винѣ, дастъ напоиение любо мояжку, любо женѣ, любо рабъ, любо господи, и отъ сего разборолѣвъ се оумроутъ прикемши, мъчимъ подавши да томимъ боудетъ).¹⁰³

- "Those who produce so-called amulets, pretendedly to be useful for mankind, let them be exiled and their property confiscated" (Οἱ τὰ λεγόμενα ποιοῦντες φυλακτὰ, ἐπὶ φιλίᾳ τὸ δοκεῖν ἀνθρώπων, δημευόμενοι ἔξοριζέσθωσαν, Ιήκε γλαγολιεμᾶ τвореште хранилнаа, за любовь іеже мнѣти чловѣческоу, раси-поуреми да проганяють се).¹⁰⁴
- "Emperor's Leo Novella LXV says: 'whosoever was seen to practice sorcery, either under the pretext that he treats human bodies or that he repairs the damage from fruits of the earth, let him be punished as an apostate'" ('Η δὲ ξ. νεαρὰ τοῦ βασιλέως Λέοντος, Εἴ τις, φησὶν, δλως τὰ τοιαῦτα φωραθείη μαγκα-νευόμενος, εἴτε προφάσει σωμάτων θεραπείας, εἴτε ἀποτροπῆς τῆς τῶν καρπίμων βλάβης, τὴν ἐσχάτην εἰσπραττέσθω ποιηνήν, τὴν τῶν ἀποστατῶν κόλασιν ὑφιστά-μενος, Σλεστъдесета же и петада Новала цара Лъва: Аци ето, рече. откоудъ тако-ва видѣнъ боудетъ къзън'ствоуie, любо извѣтому т'блесъ ц'бл'бы, любо въ отраженїе плодовитыихъ врѣда, послѣдниє да истезданъ боудетъ казнию, іеже отстуопникъ моученіе подиемати).¹⁰⁵

It is evident that the Greek Orthodox Church was strongly critical of sorcerers, but this world did not generally see accusations and trials against witches. It is perhaps significant that the persecution of witches began in the West after the Great Schism of 1054. In parts of the Orthodox East, including Serbia, "witch hunts" or "witch purges", such as those experienced in other parts of Europe, were unknown. In some European countries, such as Germany, Austria and Croatia,¹⁰⁶ witch trials were present even during the 17th and 18th centuries.

¹⁰³ *Procheiron*, XXXIX, 77.

¹⁰⁴ *Procheiron*, XXXIX, 78.

¹⁰⁵ Ed. Ralles and Potles, pp. 361–362; ed. Novaković, pp. 381–382.

¹⁰⁶ On trials against sorcerers in Europe and especially in Croatia, see V. Bayer, *Ugovor s däylom* [Treaty with the Devil] (Zagreb 1982).

Crimes against the Person

1 Homicide (φόνος, убийство)

Homicide is the killing of one human being by another. The term comes from the Latin *homo* (man) and *cidere* (to kill). In modern Serbian, the word for homicide is *ubistvo* (убиство), while the verb to kill is *ubiti* (убити). These expressions were already present in articles 86, 87, 94, 95 and 96 of Dušan's Law Code (убийство and убити). However, in our oldest Serbian legal sources, promulgated before the Law Code of Stefan Dušan, the expressions to designate homicide were *krv* and *vražda*.

Krv (кровь, lit. blood) was mentioned in treaties with Dubrovnik.¹ As we have already noted, *vražda* (вражда) had several different meanings. In treaties with Dubrovnik it always meant a fine that had to be paid for murder (Ако ли кръвъ Учини ... да плати ... в'ражда).² In monastery charters, *vražda* sometimes means a crime of homicide, and sometimes a fine that had to be paid for murder. For example, in Saint George's charter we read: "from *vražda* [i.e. homicide] the fine belongs to the Church" (Жт вражде ... гроба вса црковна).³ The Dečani chrysobull says: "And for *vražda* [murder] ... half [of the fine] to the Church, and half to the denouncer" (А ѳа враждоу ... цркви половина а наводъчи и половина).⁴ The Gračanitza chrysobull has the wording: "And a man ... who commits *vražda* [murder]" (А чловѣкъ кои ... враждоу учини).⁵ King Stefan Dušan's chrysobull for Htetovo monastery says: "And when *vražda* [homicide] was committed among the Church's villagers the Church shall take [a fine]" (И ѿ се учини вражда меѓоу црковными людми да оузима црковь).⁶ The perpetrator of *vražda* was called *убица* (*ubica* = murderer, killer).⁷ Exceptionally, in the charter of Despot John Oliver, giving privileges to the monastery of Saint

¹ See Chapter 16, note 18.

² For example King Milutin's treaty with Dubrovnik from 14 September 1302. Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

⁴ Ed. Ivić and Grković, p. 63.

⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 503.

⁶ Ed. by M. Koprivica, *SSA* 13 (2014), p. 150.

⁷ Saint George's charter. Mošin, Ćirković, and Sindik, *Zbornik*, p. 326. The same word is in use in modern Serbian as well.

Demetrios in Kočani⁸ (1337), homicide was called *dušegubina* (душегубина), and in King Stefan Dušan's charter to the monastery of Treskavac (after 1337), *dušeubistvo* (душебиство, from *duša* = soul, and *ubistvo* = murder).⁹

However, the abovementioned legal sources speak generally on homicide, without designating the essence of the crime: was it intentional or unintentional killing of another? Felonious homicide or self-defence (an excuse for the use of force in resisting attack, especially for killing an assailant)? First- or second-degree murder or manslaughter (voluntary or involuntary)? We do not know. It seems that Serbian legal documents treat homicide as a crime that was regulated by customary law and very well known to everyone. Regrettably, we do not dispose of judgments of the court, and it remains unknown whether the old Serbian customary law made a difference between two essential types of *mens rea* (a guilty mind)—intention and recklessness—in the case of homicide.

The legislation of Stefan Dušan radically changed the old ideas on homicide and made them much closer to Byzantine law. Matheas Blastares in his *Syn-tagma* disputes a homicide in three titles of Chapter Φ (F): Φ-5, “On intentional and reckless homicides” (Περὶ φόνων ἐκουσίων καὶ ἀκουσίων, Οὐγβιστέχλ βολ-νύχι и неволныχ); Φ-7, “On homicides in battles and on those who are killing robbers” (Περὶ τῶν φόνων τῶν ἐν πολέμοις, καὶ τῶν φονευόντων ληστάς, Ο иже въ бранехъ оубииствоу и иже разбоинники оубиваюштихъ); Φ-8, “On women who are killing children [embryo, foetus], using potions” (Περὶ τῶν φονευούσῶν γυναι-κῶν διὰ φαρμάκων τὰ ἔμβρυα, Ο оубиваюштихъ женахъ напоен'ми млад'чици).¹⁰

The First title speaks about intentional and reckless homicides, and it exposes only ecclesiastical rules.¹¹ Title Φ-7 contains ecclesiastical rules as well, which explain that killing in war is not a crime. For example, “Athanasius the Great in his Epistle to Ammon says that killing is not allowed, but to kill enemies in battle is worthy of legal encomium” (Ο μὲν μέγας Ἀθανάσιος ἐν τῷ πρὸς Ἀμμοῦν ἐπιστολῇ, Φονεύειν οὐκ ἔξεστι, φησίν, ἀλλ’ ἐν πολέμῳ ἀνειρεῖν τοὺς ἀντιπάλους, καὶ ἔννομον καὶ ἐπαίνου ὅξιον, Великы же Аданасије въ иже къ Амо-ноу посланији оубивати не лѣтъ јесть, рече, нъ въ рати оубивати съпротивобор'ные и закон'ни похвали достоин).¹² In title Φ-8, Matheas Blastares causes confusion through the arrangement of materials: after a title “On women who are

⁸ Kočani is a town in the eastern part of North Macedonia, 120 km from Skoplje. It has a population of 28,330, and it is the seat of the Kočani Municipality.

⁹ Novaković, *Zakonski spomenici*, pp. 662 and 671.

¹⁰ Ed. Ralles and Potles, pp. 485, 488 and 493; ed. Novaković, pp. 513, 517 and 522.

¹¹ See Chapter 18, section 6.

¹² Ed. Ralles and Potles, p. 488; ed. Novaković, p. 517.

killing children, using potions”, our author simply says “Search Chapter Γ (G) - 28 and Title 9 of the same Chapter (Canon 25 of the Synod of Ancyra)”. After that, he does not speak on the killing of an embryo, but “On unintentional homicides considering suffocated children who are lying close to their parents” (“Ἐτὶ περὶ φόνων ἀκουσίων, καὶ περὶ τῶν ἀποπνιγέντων νηπίων παρακειμένων τοῖς γονεῦσιν αὐτῶν; Ιέχε οὐειστεύχη νεβολήνυχη οὐδαβλενηνύχη μλαδенцехъ лежештихъ близъ родителъ своихъ): “It is considered that unintentional homicide exists when any child during the night lies between its parents, and they, either from negligence, or from drunkenness, or from overeating, lean heavily against a child and suffocate it” (Ἐν τοῖς ἀκουσίοις δὲ φόνοις ἐκεῖνο κρίνεται, ἥνικα τῶν βρεφῶν ἔνια, μέσον κείμενα νυκτὸς τῶν γονέων, ἐκ ράθυμίας αὐτῶν, ἢ μέθη, ἢ γαστρὸς κόρῳ βαρυνομένων, καὶ ἐμπεσόντων αὐτοῖς, ἀποπνιγῆ, Κъ небол'ныхъ же оубийствехъ оно соудить се винегда отъ младенца нѣци по срѣдѣ лежеште въ пошти своихъ родителъ, отъ небрѣженїа ихъ или пїан'ства или урѣва прѣшиштениемъ отегуляемомъ, налегшимъ имъ оудавить се).¹³ Those parents have to propitiate God by eating meager food (ξηροφαγία, соухоядениемъ) for seven years, by praying on their knees (γονάτων κλίσεσι, колѣнокланяніемъ), crying and giving charity, according to their capacity. The duration of the penalty could be shortened if they met with terrible misfortune.¹⁴ After that, in the same chapter with a misleading or incorrect title, Matheas Blastares quotes the most important Byzantine secular laws referring to a homicide, which should have been placed in Chapter Φ-5.¹⁵

The terminology of Dušan's Law Code kept the old terms *krv* and *vražda* designating homicide in articles 103, 183 and 192, treating the matter of trial procedure.¹⁶ However, articles 86, 87, 94, 95 and 96, speaking on homicide as a crime against the person, use the noun *ubistvo* (oubijstvo) and verb *ubiti* (oubijti).

Article 86, “Of homicide” (Ω οубийствѣ), reads: “When there is a homicide, he is held guilty who provoked it, even if he be killed himself” (Γдѣ се вѣртѣтъ оубийство, онъ зи коинъ боудѣ зарѣваль, да юсть кривъ ако се и оубиє).¹⁷ “As killing involved a wergild,¹⁸ perhaps this clause implies that the kindred of the guilty

¹³ Ed. Ralles and Potles, p. 493; ed. Novaković, p. 522.

¹⁴ Ed. Ralles and Potles, p. 493; ed. Novaković, p. 522.

¹⁵ Ed. Ralles and Potles, pp. 493–494; ed. Novaković, pp. 522–524. Those laws have already been mentioned in previous chapters.

¹⁶ On those articles we shall speak in Part 6.

¹⁷ Burr, “The Code of Stephan Dušan”, p. 215; Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

¹⁸ Wergild or wergild was the price of homicide, or other atrocious personal offence, paid partly to the King for the loss of the subject, partly to the lord for the loss of a vassal, and partly to the next of kin of the injured person. In Anglo-Saxon laws, the amount of com-

party should pay the fine, while the family of the man provoked should be free of liability.”¹⁹ According to Teodor Taranovski, nonpunishment for homicide of the person who provoked (коино боудѣ зар'ваљ) and nonpunishment of homicide committed in self defence are not the same thing, although these two legal institutes are very similar, and sometimes it is very difficult to differentiate between them. To engage in dispute (Czech *počátek*, Polish *paczątek*, Russian *ли буде сам началь*, German *Anfang*) or, to be more precise, the unpunishable scuffling between a man who provoked a crime and a person who was provoked is related to blood feud, which preceded the public penalty in primitive society.²⁰

The *Syntagma* of Matheas Blastares contains a provision on homicide committed in self defence (Chapter Φ-8): “The one who killed an assailant, i.e. a person who lunged at him and endangered his life, is not guilty” (Иже нашъдшаго, рече наихъвашаго оубиъв, имъже о животе бѣд’ствоваше, неповин’нъ єсть).²¹ The Greek text, taken from the *Procheiron* (xxxix, 39), is different from the insert that is in the Slavonic text (иже нашъдшаго, рече наихъвашаго оубиъвъ), and it runs as follows: ‘Ο τὸν ἐπελθόντα φονεύσας, ἐν ω περὶ τὴν ζωὴν ἐκινδύνευεν, ἀνεύθυνός ἐστιν.²²

Article 87, “Of deliberate murder” (Ѡ оубииствѣ нахвалицомъ), reads: “Where there occurs homicide without intention and violence, the fine shall be 300 perpers. But if a man kill intentionally, both his hands shall be cut off” (Кто нѣсть дошъль нахвалицомъ по силѣ терѣ ю очинилъ оубииство, да плати, тѣ, перъперъ; ако ли боудѣ пришъль нахвалицомъ, да моу се вѣбѣ роуцѣ штѣвѣ).²³ It is obvious that Dušan’s Law Code marks a difference between intentional and unintentional homicide, and it seems that it was a novelty introduced under the influence of Byzantine law.²⁴ As we have already noted, the *Syntagma* of Matheas Blastares contains a title “On intentional and reckless homicides” (Φ-5). In Chapter Φ-8 we read that in the event of a death as

pensation varied with the degree or rank of the party slain. *Angild* was the single value of a man or other thing (a single wergild). *Angylde* was the rate fixed by law at which certain injuries to person or property were to be paid for; in injuries to the person, it seems to be equivalent to the “were”, i.e., the price at which every man was valued.

19 Burr, “The Code of Stephan Dušan”, p. 215, comment on article 86. The English translator accepted Novaković’s interpretation of article 86 (*Zakonik*, p. 198).

20 Taranovski, *Istorija*, vol. II, p. 76.

21 Ed. Novaković, p. 523.

22 Ed. Ralles and Potles, p. 494.

23 Burr, “The Code of Stephan Dušan”, p. 215; Novaković, *Zakonik*, p. 68; *Zakonik cara Steфana Dušana*, vol. III, p. 122.

24 See Chapter 17, section 3.

a result of an armed attack, if the guilty party were a noble, his estate was forfeited, and if commoner, he was beheaded and his body thrown to wild beasts (Καὶ ἔστι τοῦ μὲν ἐκουσίου φόνου τιμωρία, ἐπὶ μὲν ἐντίμου φονεύσαντος, δεπορτάτιων, ἡτοι τελεία δήμευσις· ἐπὶ δὲ τῶν εὔτελῶν, τὸ ξίφει καὶ θηρίοις ὑποβληθῆναι, Ι ιεστί βολ' ομογενούς οὐβίστῳ τοματεῖς, αλιτε οὐγό ιεστί ποιτενί ουβιβίη, ρασιπογιετε σε, σιρενύς σύβρισσηνο ποδιεμιέτε ραζ' γραβλιενή ιμενίδ; αλιτε λι ζε σεβρ, μύγιο ι ζεβρεμη πρέδαιετε σε).²⁵

Article 94, "Of lords and commoners" (Ω βλαστέλεχη и в сејрδ), reads: "If a lord kill a commoner, whether in a city or in a mountain district, he shall pay 1000 perpers. But if a commoner kill a baron, he shall pay 300 perpers and both his hands shall be cut off" (Ακο ουβίε βλαστέλινъ сејра оу γραδδ или оу жоупи, или оу κατογнδ, да плати тысčψд перъперь; αко ли сејерь βластέльна оубие, да мон се вејб роуцѣ ютсѣкд, и да плати, тѣ, перъперь).²⁶ This clause is typical of the feudal system that dominated the major European nations between the 9th and 15th centuries and which was based upon inequality of social classes. Homicide between members of the higher and lower estates was exempt from the general rule on murder, prescribed by article 87. As we have already seen, according to article 87, both hands shall be cut off only in the case of intentional homicide. But, article 94 punishes a commoner who has killed a nobleman by the cutting off of both hands (and a fine of 300 perpers) regardless of whether the homicide was intentional or unintentional. In the same way, the Code makes no difference between types of *mens rea* in the case of a baron: a nobleman who committed a crime of homicide (intentionally or unintentionally) shall pay 1000 perpers.

The motives of Dušan's legislation were clear: brutal punishment for the killing of a lord had the goal of preventing commoners' revolts against the privileged class. From the other side, the Tsar's desire was to limit the violation of immunity rights done by noblemen in times of labour shortages that existed in mediaeval Serbia.

Article 95b,²⁷ "On homicide" (Ω ουβίστвѣ), reads: "Whosoever be found to have killed a bishop, or a monk, or priest, let him be killed and hanged" (Ктв се

25 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

26 Burr, "The Code of Stephan Dušan", p. 216; Novaković, *Zakonik*, p. 73; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

27 Article 95 consists in fact of two articles, but the copyist of the Prizren text integrated them into one, under the title "Of insulting" (Ω π'օστη). The first sentence speaks of insulting and the second of killing clerics. In other old transcripts that are two different articles: Struga manuscript, articles 52 and 53; Athos manuscript, articles 51 and 89; Hilandar manuscript, articles 83 and 84; Hodoš manuscript, articles 83 and 84; and Bistritza

вебрѣте оубиъ свѣтигелѧ, или калоугіера или попа, да се тъзи оубиє и вебрѣси).²⁸ The text has the expression “be killed and hanged” (да се тъзи оубије и вебрѣси), which does not specify the method of killing. The hanging probably means that the body was gibbeted after death.²⁹

It is important to underline that bishops, monks and priests, as the three essential categories of clerics, enjoyed the same protection by law, although among their degree of ranks there existed great social and economic differences. This is also the first reference in the Code to punishment by death, probably introduced at the request of the ecclesiastical authorities, because the *Syntagma* of Matheas Blastares does not contain any rule concerning the killing of clerics. By article 95b, Dušan's Law Code completed this strange lacuna.

Article 96, “Of parricide” (Ѡ оубииствоу), runs: “Whosoever kills his father, mother, brother or own child, let that murderer be burnt in the fire” (Кто се вебрѣте оубиъвъ отыца, или матеръ, или брата или чедо свое, да се тзвѣи оубица иждѣже на вргны).³⁰ This regulates *parricidium*, the murder of a parent, mentioning fathers, mothers, brothers and a child. Brothers were mentioned due to the patriarchal way of life in extended families (so-called *zadrugas*) that dominated in 14th-century Serbia. Sisters left the *zadruga* by marriage, and it was perhaps for this reason that they were not mentioned.

The punishment for *parricidium* was very cruel—“to be burnt in the fire”—and this is the only reference in the Code to the penalty of burning to death, which penetrated from Byzantine law. The *Syntagma* of Matheas Blastares in Chapter Φ-8 contains a similar provision: “The one who killed a kinsman, either ascendant or descendant, shall be burnt in the fire” (Ο ἀνελῶν ἀνιόντα ἢ κατιόντα συγγενῆ, πυρὶ παραδίδοται, Оубији въсходеџаго или нисходеџаго съродникса, огњю прѣдајетъ се).³¹

manuscript, articles 92 and 93. As Stojan Novaković took the Prizren copy as a model for his edition of the Code, Burr translated article 95 as one, under the title “Of insulting and killing clerics” (p. 216). To avoid any confusion I accepted the numeration proposed by Đorđe Bubalo (*Dušanov zakonik*, pp. 93–94), who denoted this article as 95a and 95b.

²⁸ *Zakonik cara Stefana Dušana*, vol. I, pp. 108, 176, 184; vol. II, pp. 96, 134, 194, 249; vol. III, p. 124.

²⁹ Burr, “The Code of Stephan Dušan”, p. 216.

³⁰ Burr, “The Code of Stephan Dušan”, p. 216; Novaković, *Zakonik*, p. 75; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

³¹ Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

2 Mayhem

In common law, mayhem was violently depriving others of the use of such members as may render them less able in fighting, either to defend themselves or to annoy their adversary. Examples of mayhem were cutting off a person's hand, foot, or finger or putting out an eye. It was not mayhem to cut off another's nose or ear or to disfigure a person in a way that did not interfere with their ability to fight. Interestingly, it was mayhem to knock out a person's front tooth, but it was not mayhem to knock out a back tooth, because such a tooth was not needed to bite someone while fighting.³²

Contrary to Byzantine legislation, the law codes of West European mediaeval States treat mayhem with precision. For example, the Germanic law system, especially the so-called *Leges Barbarorum* ("Laws of the Barbarians"),³³ is in principle based on compensation rather than revenge. Any injury must be compensated according to the damage done regardless of motive or intent. Even for capital crimes, like murder and mayhem, the compensation is a wergild, a fixed amount depending on the sex and social status of the victim. The *Leges Barbarorum* contains a long list of fines (*compositio*) for various offences and crimes, including mayhem.

Byzantine legal miscellanies do not pay much attention to mayhem. Only one article of the *Procheiron*, speaking on homicide, says: "If someone strikes anyone with a sword, and the striked person dies, the perpetrator shall be sentenced to death by sword; if a striked person does not die, one of the the perpetrator's hands shall be cut off" ('Ο μετὰ ξίφους πλήγτων τινά, ἐὰν φονεύσῃ, ξίφει τιμωρείσθω· εἰ δὲ ὁ πληγεῖς οὐ τελευτήσει, ὁ τὴν πληγὴν δεδωκὼς χειροκοπείσθω, Ιήε μъсемъ оударитъ нѣкого; аще оумрѣтъ оударѣнии, мъсемъ прїиметъ моукъ. аще же оутаџъвѣни не оумрѣтъ, давашемъ таџъвѣ да оустечетъ се роука').³⁴

The Serbian legal sources mention mayhem only in two cases, using the term "make someone bleed" (ѡкъвави). Saint Stephen's charter says that if someone makes somebody bleed, he has to give three linen cloths to the Church, and three to the denouncer (ѧѡкъвави'шє цркви .Г. плат'на ѧ наводьини .Г. плат'на).³⁵ Article 166 of Dušan's Law Code, speaking of drunkards (Ѡ пита-ници), in the first sentence orders: "If a drunken man come from anywhere and strike anyone or cut him or make him bleed [wound him], yet not to death,

³² Brown, *Legal Terminology*, p. 108.

³³ A class name for several Latin law codes of the Germanic peoples, dating to the 5th and 9th centuries, influenced by Roman law, canon law and earlier tribal customs.

³⁴ *Procheiron* XXXIX, 82, ed. Zepos, vol. II, p. 226; ed. Dučić, p. 413; ed. Petrović, p. 327a.

³⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

then shall one eye be removed and one hand cut off" (Пијаница је да гређе и зарубе кога, или посебче, или укравави, а не до смрти, таковом је пижаници да моч се око изме, и рука је посебче).³⁶ However, Serbian legal sources mention only cases of bloodshed—a serious wounding—but what type of mayhem that would that be remains unclear. Anyway, bloodshed was a type of mayhem, and it must be distinguished from homicide. We can see this in a passage from a peace treaty concluded by Bosnian Duke Radoslav Pavlović and the Republic of Dubrovnik (25 October 1432): the difference between homicide and bloodshed is clearly marked (да всяко оубиство чловече или кръви пролитыя).³⁷

3 Battery

Battery is unpermitted physical contact with another person in an angry, revengeful, rude, insolent, or reckless manner. It may also be defined as the unlawful application of force on another person.³⁸

The Serbian legal sources mention only one case of battery. According to Saint Stephen's charter a thug (**бонџа**) who has beaten up a monastery steward (**блудал'ца бив'шє**) has to give a compensation of six sheep and will stay in the dungeon for three months.³⁹

4 Rape (**βιασμός**, *raptus*, **ножда**)

In common law, rape was defined as the unlawful, forcible carnal knowledge by a man of a woman, against her will, or without her consent. The essential elements of the crime are the following: 1) carnal knowledge; 2) force by the man; 3) nonconsent by the woman. It was impossible, under common law, for a woman to commit the crime of rape, because the definition required carnal knowledge "by a man of a woman".⁴⁰

Byzantine law does not pay much attention to rape and does not make a great difference between unlawful, forcible carnal knowledge by a man of a woman and the act of sexual intercourse committed by a man with a woman

³⁶ Burr, "The Code of Stephan Dušan", p. 532; Novaković, *Zakonik*, p. 131; *Zakonik cara Stefana Dušana*, vol. II, pp. 212, 259; vol. III, p. 148.

³⁷ Novaković, *Zakonski spomenici*, p. 237.

³⁸ Brown, *Legal Terminology*, p. 109.

³⁹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465. See Chapter 18, section 5.

⁴⁰ Brown, *Legal Terminology*, p. 109.

who is not his wife, even with her consent. However, the *Ecloga* contains two articles concerning a rape: xvii, 30, “Whosoever rapes and deflowers a maiden, let his nose be cut off” (Ο βιαζόμενος κόρην καὶ φθείρων αὐτὴν ρινοκοπείσθω); xvii, 31, “Whosoever deflowers a maiden under the age of consent, i.e. before the age of 13, let his nose be cut off and let half of his property be given to the one who was deprived of virginity” (Ο φθείρων κόρην πρὸ τῆς ἡβῆς ἥγουν πρὸ τοῦ τρισκαιδεκατούς χρόνου ρινοκοπείσθω καὶ τὸ ἥμισυ τῆς ὑποστάσεως αὐτοῦ παρεχέτω τῇ φθαρείσῃ).⁴¹ The *Procheiron* took these two provisions from the *Ecloga* and in article xvii, 30 it added “and he has to give her [violated girl] a third of his property” (διδοὺς αὐτῇ καὶ τὸ τρίτον τῆς αὐτοῦ ὑποστάσεως).⁴² In the Serbian translation of the *Procheiron* (*Zakon gradski*) these two articles runs as follows: xxxix, 66: Нојуждю сътворити отроковици и растливи ю носа оурбезанie подъиметь. давъ юи и тртѣю честъ имѣнїа своего; xxxix, 67: Растливи дѣвицѣ прѣждѣ възрастта сиречъ прѣждѣ .гі. лѣть врѣмень, носа оурбезанie подъиметь, и половинѣ имѣнїа своего да вѣдасть растлѣвшии отроковици.⁴³ There is a similar provision in the first part of article 138 of Dušan's Law Code, but only in the late Ravanitza transcript (1650–1687): “The law orders: whosoever forces and deflowers a maiden, using coercion or deception, let his nose be cut off and he has to give to the maiden a third of his property” (Повелевает законъ, аще кто понудит дѣвицѣ растлить е, аще то сътворит съ нюю по силе, илѣ коимъ вѣлаще нием, да үреждѣт емъ носъ, и да дасть дѣвици третио чест имениа своего).⁴⁴

The short Chapter Г-30 of the *Syntagma* of Matheas Blastares is entitled “On those who rape virgins” (Περὶ τῶν γυναῖκας παρθένους βιαζόμενων, Ο иже жени дѣвице ноудештихъ).⁴⁵ However, among the five laws quoted by Mathreas Blastares, only one concerns rape: the provision of the *Procheiron* xxxix, 66, already mentioned. Other laws in this chapter speak on seduction of a virgin and fornication (voluntary sexual intercourse between persons not married to one another).

Charters promulgated before Dušan's Law Code mention rape using the expression *devički razboj* (разбои дѣвицу),⁴⁶ literally “rape of a virgin”. Saint George's charter says that the Church shall take a fine from the perpetrator of rape (Цт дѣвицу разбою ... гловба вса црквона).⁴⁷ The same provision

⁴¹ Ed. Burgman, p. 236.

⁴² *Procheiron* xxxix, 66, and 67, ed. Zepos, vol. II, p. 224.

⁴³ Ed. Dučić, p. 409; ed. Petrović, p. 326a.

⁴⁴ *Zakonik cara Stefana Dušana*, vol. III, p. 332.

⁴⁵ Ed. Ralles and Potles, pp. 101–102; ed. Novaković, pp. 210–211.

⁴⁶ *Devica* (дѣвица) = virgin. *Razboj* (разбој) = rape. The word *razboj* is obsolete. In modern Serbian the word *silovanje* (силовање) is in use.

⁴⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

is repeated in King Dušan's chrysobulls for the monasteries of Htetovo and Treskavac.⁴⁸ In the Greek charters of Serbian monarchs *devički razboj* was called παρθενοφθορία, mentioned in the following documents: King Dušan's chrysobull in favour of Saint John the Baptist monastery on the mountain Menoikeion (October 1345); Tsar Dušan's second chrysobull presented to the monastery of Iviron (April 1346); Tsar Dušan's chrysobull issued to the monastery of Zograf (Ιερά Μονή Ζωγράφου, April 1346); and Tsar Dušan's chrysobull presented to the Esphigmenou monastery (April or May 1346).⁴⁹ However, the amount of the fine was not fixed.

Dušan's Law Code also speaks of rape in article 53, entitled "Of forcing a noblewoman" (Ω осилію владыкє, Ω насилиованїи in Athos and Bistrizta texts):⁵⁰ "And if any lord take a noblewoman by force, let both his hands be cut off and his nose be slit. But if a commoner take a noblewoman by force, let him be hanged. And if he take his own equal by force, let both his hands be cut off and his nose slit" (И кон властѣльни оузыне владыкъ по силѣ, да мѣ се ѿгѣ роукъ ѿтсекъ, и носъ оуреже; ако ли сеѣръ оузыне по силѣ владикъ да се ѿбѣси; ако ли свою дроугъ оузыне по силѣ, да мѣ се ѿгѣ роукъ ѿтсекъ, и носъ оуреже).⁵¹ As in article 94, the Code punishes rape according to the social status of the perpetrator and provides a more brutal penalty than Byzantine law. It is remarkable also that the Code does not prescribe a penalty in a case when a lord take by force a commoner woman. Some historians, especially Marxists, have thought that noblemen remained unpunished for such misdeeds.⁵² It is impossible to give a definitive answer on this question because we do not dispose with adequate historical sources. However, it is hard to believe that in any society rape was an unpunished crime. Trying to resolve this problem Teodor Taranovski found analogy in the legislation of Polish King Casimir III the Great (Kazimierz III Wielki, 1333–1370), Dušan's contemporary. According to Casimir's *Statutes* if a member of the *szlachta* (Polish nobility) raped a peasant woman from the village belonging to him, all the villagers from his manor could leave the landlord's estate.⁵³ The clause does not originate from customary law, but was rather the

⁴⁸ Ed. M. Koprivica, *ssa* 13 (2014), p. 150, and Novaković, *Zakonski spomenici*, p. 671, para. x.

⁴⁹ Solovjev and Mošin, *Diplomata graeca*, pp. 10, 48, 50, 68, 100. Cf. pp. 477–479.

⁵⁰ *Zakonik cara Stefana Dušana*, vol. I, p. 176, vol. II, p. 184.

⁵¹ Burr, "The Code of Stephan Dušan", p. 208; Novaković, *Zakonik*, p. 46; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

⁵² See Janković, *Istorija države i prava feudalne Srbija*, p. 93.

⁵³ Taranovski, *Istorija*, vol. II, p. 87. Cf. M. Handelman, *Historja polskiego prawa karnego, tom II: Prawo karne w Statutach Kazimierza Wielkiego* [History of Polish Penal Law, vol. II: Penalty Law in the Statutes of Casimir the Great] (Warsaw 1909), pp. 170–171.

King's wish to limit noblemen's despotism and protect peasants from their evil doing. Maybe villagers in mediaeval Serbia had the same right.

Article 192, entitled "Of the Court of Justice" (О судѣ и правомѣ), preserved only in the late Rakovac text, mentions "rape of a noblewoman" (ραз'ен влѧдич'ескии) as evidently part of series of enactments alongside articles 103 and 183 dealing with the sphere of the Imperial Court of Justice, Dušan's King's Bench.⁵⁴ We shall say more on that article in Part 6.

Among the maritime towns which recognized the supreme power of the Serbian monarchs, two of them in their Statutes contain provisions considering rape: Chapter C of the Statute of Kotor⁵⁵ and Chapters ccI and ccII of the Statute of Skadar.⁵⁶ However, those rules were much more similar to the statutes of

54 Burr, "The Code of Stephan Dušan", p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol. III, p. 276. See B. Marković, "Razboj vladičeski", in *LSSV*, p. 611.

55 Rape was regulated in Chapter C, entitled "Of violence against women" (*De violentiis mulierum*). It contains different penalties depending on the victim's social status. The rapist could avoid punishment by marrying the victim, if both were unmarried and if she and her family, or in the case of *ancilla*, she and her master, gave consent. If they do not enter into a marriage, the perpetrator had to pay a fine of 50 perpers for the rape of an *ancilla* (100 if she was unemployed), 500 for a woman of middle-class, i.e. from good commoners (*si fuerit de mediocri manu, et bono populo*), and 1000 for a noblewoman. If the perpetrator could not or would not pay the fine, he had to be imprisoned for three months. If he still did not pay, he would face a maiming punishment: the loss of his little finger if the victim was a serving girl, his thumb and little finger if she was a middle-class citizen, and his whole hand if she was a noblewoman. In the case of attempted rape, according to an addition from the year 1409, the sum was reduced to a quarter, and there was no corporeal punishment. The rape of a married woman and other similar cases were to be subjected to "similar penalties" (*similibus penitibus*). It is worth noting that the same clause implies that only "honest women" (*mulleres honestas*) could be the victims of rape: "and to similar penalties shall be subjected those who rape or violate married girls, or other honest women" (*et similibus penitibus subiaceant qui sforzauerint, aut violauerint maritatis puellas, aut alias mulleres honestas*). That would exclude prostitutes and women who led a promiscuous life. *Statuta Civitatis Cathari*, vol. I, pp. 60–62.

56 Chapter ccI, "On the rape of a woman" (*De sforzar femena*):

We order that if any man rapes a good woman who is not married, and the man is unmarried himself, we will it that he takes her as wife in legitimate marriage; and if the woman is married and the man who has raped her is married, we will it that he pays a fine of 50 perpers, of which half goes to the Prince and half to the woman, and of the aforesaid the woman must present good proof.

Ordinemo chi zaschaduno homo sforzassi alcuna bona femena non maritata per forza e lo homo non fosse uxorato, volemo che la toia per mulier per legitimo matrimonio; e si la femena fossi maritata e l'homo chi la sforza fossi uxorato, volemo chi paghi perperi L, la mità a lo conte e la mità a la femena, e questo dicemo se la femena provassi per bona prova.

other Mediterranean cities, with a strong influence from Venice and Dubrovnik (Ragusa), and the legacy of Roman law coming from the West, than to mainland Serbian law. It is disputable whether they belong at all to Serbian mediaeval law.

5 Injury (*ἀδικία*)

Injury is any wrong or damage done to another, either in his person, rights, reputation, or property. Serbian mediaeval law differs real injury and verbal injury (insult).

a) *Real Injury* is inflicted by any act by which a person's honor or dignity is affected. Serbian mediaeval law knows for two types of real injury: *plucking the beard* and *to pull off somebody's cap*.

Plucking the beard, so-called *mehoskubina* (мехоскубина), is an obsolete word, no more used in modern Serbian language. It comes from the old, mocking term *meh* (мехъ), meaning *hair, coat, fur*,⁵⁷ and the verb *skubati* (скубати) = *to pluck*.⁵⁸

Mehoskubina was mentioned in two charters preceding Dušan's Law Code. Saint Stephen's charter says that the fine for plucking the beard is the same as for refusal of judges envoy or clerk (Мехоскубинा јако и штбон ...), i. e. 18 dinars.⁵⁹ But, later Gračanitza charter (1315–1321) simply says *plucking the beard 6 dinars* (мехоскубинा .S. динаръ),⁶⁰ meaning that the amount of the fine is three times lawer than prescribed by Sain Stephen's charter.

Dušan's Law Code contains two articles regarding plucking the beard (*mehoskubina*).

Chapter CCII, "Of a raped female servant" (*De ancilla sforzata*):

We order if any man rapes a female servant of any man or any woman and the female servant dies in parturition, we will it that the one who raped her must give to the female servant's master another female servant, and the son or the daughter given birth to by the female servant shall be servants of the said female servant's master.

Ordinemo algun homo sforzassi ancilla de algun homo over de àlguna femena a l'ancilla morisse in partu, volemo chi quello chi la sforzasse sia tenudo de dar a lo parone de la ancilla una altra ancilla, e lo fiulo over la fiola che fecissi la ancilla che sia serva over servo de lu parone de la dicta ancilla.

Statut grada Skadra, ed. Bogojević-Gluščević, pp. 176–177.

57 In modern Serbian *meh* (*мех*) means bellows (blacksmith bellows).

58 *Skubati* (*скубати*) is no longer in use. The modern word is *čupati* (*чупати*) = to pluck.

59 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

60 *Ibid.*, p. 503.

Article 97, Of the Lord's Beard (Ѡ брадѣ властѣвскон): *Whoso shall pluck the beard of a lord or good man, both his hands shall be cut off* (Кто се вбреѣте искѹбъ брадѣ властѣвлино, или добреѣ члобѣкѣ, да се томѹзїи вбѣ роуци аутсѣкѣ).⁶¹

Reverence for the beard, as a sign of dignity and honour, was so great that to pull it was a dire insult equivalent to murder, involving the same penalty of amputation of both hands (see article 87).⁶² However, such a penalty is present in the Struga and Prizren transcripts. Athos, Hilandar, Hodoš and Bistritza manuscripts have *his hand shall be cut off* (да се томоузи роука аутсѣчє).⁶³ In any case, the punishment is very severe and cruel.

What is meant by “good man”, *dobar čovek* (*добар човек*), is uncertain. It seems to mean every respectable and honourable man from the ranks of the commoners. “It may be analogous to the *legalis homo* of Anglo-Roman law.”⁶⁴

Article 98, Of Commoner's Plucking (Ѡ скѹбѣжъ се бровѣ): *If two commoners pluck, the fine is six perpers* (И ако се и скѹбѣта два се бра, ме хоскоубине .S. перьперь).⁶⁵

For the same crime the Code prescribes much milder fine in the case of commoners, but the amount that had to be paid is much higher than in Saint Stephen and especially Gračanitza charter. According to the latest researches one golden perper was settled accounts as 24 dinars. In the first half of the 14th century the rate was 1:30, and in the first half of the 15th century even 1:40.⁶⁶

To pull off somebody's cap was real injury prescribed with a second part of the article 166 (Of Drunkards): But if a drunken man molest anyone or pull off his cap⁶⁷ or do him other insult, but do not wound him, he shall be flogged with one hundred strokes and cast into prison, and when he is taken from prison he shall be flogged again and released (аще ли пїан задерє, или капоучь скыне,

61 Burr, “The Code of Stephan Dušan”, p. 216; Novaković, *Zakonik*, p. 75; *Zakonik cara Stefana Dušana*, vol. I, p. 108; vol. III, p. 126.

62 See R. Mihaljić, “Brada”, in LSSV, pp. 59–60. Plucking the beard and hair as a crime penetrated into Turkish legislation after the conquest of Serbia. See M. Begović, “Tragovi našeg srednjovekovnog krivičnog prava u turskim zakonskim spomenicima” [“Traces of Our Mediaeval Criminal Law in Turkish Legal Documents”], Ič 6 (1956), pp. 1–11, especially pp. 9–10.

63 *Zakonik cara Stefana Dušana*, vol. I, p. 186; vol. II, pp. 96, 134, 194, 249.

64 Burr, “The Code of Stephan Dušan”, p. 216.

65 Burr, “The Code of Stephan Dušan”, p. 217; Novaković, *Zakonik*, p. 75; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

66 See R. Čuk, “Zlatnici” and “Novac”, in LSSV, pp. 242–243 and 441–444.

67 The Serbian word is *kapuč* (*капуچ*), coming from Italian *cappuccio* (Novaković, *Zakonik*, p. 246). In modern Serbian the word is *kapa* (*кана*). See Đ. Petrović, “Pokrivala za glavu”, in LSSV, pp. 540–543.

или иноу срамотъ оучини, а не ѡкръвави, да га бїо, ѩ, стапи, и да се връже оу тъмницу, и потомъ да се извѣде ис тъмнице, и да се бїе и поусти).⁶⁸

Beside pulling off of somebody's cap, article 166 mentions "other insult", without denoting what kind of insult could it be. It is not clear, as well, how long a drunkard shall stay in prison.

Kapa (cap) was a sign of dignity in Serbia, till the end of 19th century, and that is the reason why the penalty for pulling off of somebody's cap was so strict.

b) *Verbal Injury or Insult* (ѡп'сованіе, speak in a way that hurts or is intended to hurt a person's feelings or dignity) was prescribed by three articles of Dušan's Law Code.

Article 50, Of Insults to Gentlemen (Ѡѡп'сованіи властѣличікѣ): If a lord insult and shame a lesser lord let him pay one hundred perpers. And if a lesser lord insult a greater, let him pay one hundred perpers and be beaten with sticks (Властѣлинъ коиѡп'сѹи иѡсрамоти властѣличікѣ да плати, ѩ, перъперь; и властѣличикъ ликоѡп'сѹи властѣлина, да плати, ѩ, перъперь и да се бїе стапи).⁶⁹

The contrast is here between the lord (magnate, *vlastelin*) and the mere gentleman (lesser lord, *vlateličić*). *Vlasteličić* could even *be beaten with sticks*, what is an exemption from the feudal rule that nobility cannot be punished by corporal penalties. According to Alexander Solovjev in the class of lesser lords (*vlasteličici*) could enter even some commoners who were able for military service. As they were not "nobility by birth" (hereditary nobility), they could be beaten with sticks.⁷⁰

Article 55, Of Insulting Lords (Ѡѡп'сованіи властѣвскому): And if a commoner insult a lord, let him pay one hundred perpers and be signed. And if a lord or gentleman insult a commoner, let him pay one hundred perpers (И лико севърьѡп'сѹи властѣлина, да плати, ѩ, перъперь и да се осмѹди; лико ли властѣлинъ или властѣличикъѡп'сѹи севра, да плати, ѩ, перъперь).⁷¹

The inequality between estates is evident one more time: a commoner who insults a lord shall pay 100 perpers (what was for a peasant a tidy sum of money) and he shall be signed. Singeing (*осмѹдити*, *osmuditi*, *comburere capillos de capite et barbam*, burning of the hair and beard) a person who is alive was a

68 Burr, "The Code of Stephan Dušan", p. 532; Novaković, *Zakonik*, p. 131; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

69 Burr, "The Code of Stephan Dušan", p. 208; Novaković, *Zakonik*, pp. 43–44; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

70 See A. Solovjev, "Seljaci–plemići u istoriji jugoslovenskog prava" ["Villagers–Noblemen in the History of Yugoslav Law"], *APDN* XXXI/48 (1935), pp. 455–464.

71 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 47; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

painful and dishonorable penalty. Infamous character of punishment is noticeable even in its Serbian expression—*smudenje*, commonly used for pigs.⁷²

Similar difference in punishing for verbal injury between a villager and gentleman could be seen in the article 44 of the *Poljica Statute*⁷³ from 1440: *Who insults his own equal ... let him pay 5 livres. If a villager insults a gentleman, [the fine] shall be double. If a villager insults his lord, let his tongue be cut out or to redeem himself paying 100 livres* (Тко би опсовао свога држга ... јпада либарј .е. Тко ли би кметић опсовао племенита човика, тђ је дљило. Тко би опсовао кметић свога господина, дљжан је да мђ јзник јриже, али се искушпи либарј .р.).⁷⁴

Article 95 a, On Insult (Џ посости): *Whoso insulteth a bishop, monk, or priest, he shall pay one hundred perpers* (Кто ће опсодио светитеља или каљгуера, или попа, да плати, џ, перпера).⁷⁵

It is interesting that the fine for insulting was equal for all social classes. Clergy did not enjoy special status, like in the case of homicide (article 95 b).

Special case was article 111, entitled On Disgracing Judges (Џ судијине срамоте) which protects the persons and dignity of the judges: Whoso be found to disgrace a judge, if he be a noble, let all be taken from him; but if it be a village, let it be scattered and confiscated (Кто ће наиди срамотивъ, ако боу дѣ властѣлињ, да мђ ће вљсе оузеਮе; ако ли село да ће распѣ и плаћниј).⁷⁶

The judges were by their very duties exposed to the anger of disappointed and often formidable, litigants and the Code protects their honour. The legislator used a verb *osramotiti*, meaning *to disgrace, dishonor, discredit*. It seems that the Code by the usage of the term *osramotiti* covered both types of injury—real and verbal.⁷⁷

⁷² Karadžić, *Srpski rječnik*, p. 472: *abfingen, amburo, ein Schwein*.

⁷³ The Poljica Statute from 1440 is the most important historical source, written in Cyrillic, for the Republic of Poljica, an autonomous community which existed in the late Middle Ages in central Dalmatia, near the modern-day city of Omiš in Croatia. It was the result of the wish of the people of Poljica for stronger independence from the Kingdom of Hungary (Croatia) and the Republic of Venice.

⁷⁴ Edited by V. Jagić, *Poljički Statut, MHJSM*, vol. IV (Zagreb 1890), p. 54.

⁷⁵ Burr, "The Code of Stephan Dušan", p. 216; Novaković, *Zakonik*, p. 74; *Zakonik cara Stefana Dušana*, vol. II, pp. 194, 249; vol. III, p. 124.

⁷⁶ Burr, "The Code of Stephan Dušan", p. 518; Novaković, *Zakonik*, p. 85; *Zakonik cara Stefana Dušana*, vol. II, 251, vol. III, p. 130.

⁷⁷ Burr translated the beginning of article 111 as follows: "Whoso shall insult a judge". However, in translation of articles 50, 55, and 95a, he used the verb "to insult" for verbal injuries as well.

Crimes against Morality

1 Abduction (ձրուչ, խլպանություն)

Abduction was the unlawful taking or detention of any female for the purpose of marriage, concubinage, or prostitution. Matheas Blastares introduced in his *Syntagma* Chapter A-13, under the title “On those who abduct women for marriage purposes” (Περὶ τῶν ἀρπαζόντων ἐπὶ γάμῳ γυναῖκας, Ο въехъишаюцгихъ на бракъ жены).¹ The chapter contains four ecclesiastical rules (Canon 11 of the Synod of Ancyra, Rule 22 and 30 of Basil the Great and Canon 28 of the Fourth Ecumenical Council, i.e. Canon 22 of the Sixth Ecumenical Council) and 11 imperial laws, mostly taken from the *Basilika*.

“The one who abducted a woman, either engaged or not, or widow, or noble-woman, or slave, or freemade or servant of the Church, or even his own fiancée” (Οἱ ἀρπάζοντες γυναῖκα ἢ μεμνηστευμένην, ἢ ἀμνήστευτον, ἢ χήραν, εἴτε εὐγενῆς ἐστιν, εἴτε δούλη, ἢ ἀπελευθέρα, καὶ μάλιστα, εἰ τῷ Θεῷ εἴνι καθιερωμένη, καὶ εἰ τὴν ἴδιαν τὶς μνηστὴν ἥρπασεν, Въехъитивши жены или оброуշен'ю или в'довицоу, любо благородна юсть, любо роба или освободна, и паде аште боудеть освещен'я, и аште свою ксто оброушициоу похыги)—if the abduction was conducted through force of arms, the abductor was to be punished by death (executed with sword), while his aiders would be severely beaten, their hair cut and their noses slit. If the abductors were unarmed, the perpetrator’s hand would be cut off, while aiders would be beaten, shorn and exiled. Abduction was done either with or without the consent of a woman (especially in a case of a married woman). If the parents of a woman dared to demand adequate compensation, they would be sent into a dungeon. If a slave was among the aiders, he was condemned to death by burning.²

The entire property of a person who abducted a “novice, or nun, or deaconess, or the one who has any other devout position” (ἀσκήτριαν, ἢ μονάστριαν, ἢ διάκονον, ἢ ἄλλο εὐλαβές ἔχουσαν σχῆμα, постнициоу или иносию, или діаконицоу, или ипъ благоговѣннъ имоуштогуо образъ) would be given to the church or monastery of the abducted woman. She and her entire property had to be sent into a monastery where they had to be closely guarded.³

¹ Ed. Ralles and Potles, pp. 101–104; ed. Novaković, pp. 104–107.

² *Basilika*, LX, 58, 1.

³ Iust. *Novella*, CXXIII, 43.

- “The one who abducted a virgin or a widow cannot enter into a marriage with her, even if her father gave a consent and pardoned a crime” (Ο παρθένον ἡ χήραν ἀρπάσας, οὐ δύναται ταύτην γαμεῖν, οὐδὲ συναινοῦντος τοῦ ταύτης πατρὸς, καὶ συνχωροῦντος τὸ ἔγκλημα, **Иже дѣвицу или вдовицу въсхыгтивъ, не можетъ сию имѣти жену, ни же пристаюштоу тое отцоу, и пристаюштоу съгрѣвшенїе.**⁴).
- “An abducted woman is not to enter into a marriage with her abductor; if her parents gave consent for such a marriage, let them be sent into a dungeon” (Μὴ γαμείσθω ἡ ἀρπαγείστα τῷ ἀρπάσαντι αὐτὴν, ἀλλ’ εἰ καὶ συναινέσουσι τῷ τοιούτῳ σινοικεῖσθαι οἱ γονεῖς αὐτῆς περιορίζονται, **Да не посагнеть похыщеннюа за похыгтившаго ю, ни аще и пристаноутъ таковому съжигтел’ствоу родителіе ѿе, въ тъмницу въмѣстають се.**).
- “An abducted woman shall receive the abductor’s estate, if she does not want to enter into a marriage with him; if she wanted to do that, both estates, abductor’s and hers, shall be confiscated, as well as the estates of accomplices in the crime, being parents or other people” (Η ἀρπαγεῖστα κερδαίνει τὰ τοῦ ἀρπαγος πράγματα μὴ θελήσασα συζευχθῆναι νομίμως αὐτῷ· ἐπείτοι γε, εἰ θελήσει τοῦτο, δημεύεται ἡ τε αὐτῆς περιουσία καὶ ἡ τοῦ ἀρπαγος, καὶ ἡ τῶν συναιρομένων ἐπὶ τῷ κακῷ, κἄν τε γονεῖς τούτων ὥστι, κἄν τε ἀλλότριοι, **Похыщеннюа придобивають похыгтившаго ю имѣнїе не въсхогтевши здакон’но съпрешти се сънимъ; попиеже бо, аште въсхощите се сътворити, расхыштають⁵ се тоие имѣнїе и хыштиные и съприставшихъ о злѣ, любо родителіе симъ боудоуть, любо тоуждїи).**⁶
- “Abduction is worse than adultery; the one who abducted married woman or virgin shall be punished severely if someone accused him, even if the maiden’s father, after being begged, pardons him” (Η ἀρπαγὴ μείζων ἐστὶ τῆς μοιχείας· καὶ ὁ ἀρπάσας γεγαμημένην, ἡ παρθένον, ἐσχάτως τιμωρεῖται, καὶ ξένου κατηγοροῦντος, καὶ εἰ ὁ πατὴρ τῆς κόρης παρακληθεὶς συνεχώρησεν, **Похыщенню вештъше юсть прѣлюбодѣиства; и похыгтиви посаг’шоугю или дѣвицу, послѣдне томимъ юсть, и тоуждемоу на нь глаголюштоу, аште и отъци отро-ковицѣ, оумолиенъ бывъ, простиль юсть).**⁷
- “If a slave reported an abduction of a virgin, he would be released; or if he exposes an already committed and forgiven abduction” (Ἐὰν δοῦλος ἀρπαγὴν

⁴ *Basilika*, LX, 58, 1.

⁵ The Serbian translator used the verb *rashištati*, meaning to carry off, to snap up, while the Greek verb δημεύεω mens to confiscate (to the benefit of the State). I translated according to the Greek text.

⁶ *Iust. Novella CXLII, 1; Basilika*, LX, 58, 5.

⁷ *Basilika*, LX, 58, 6.

παρθένου καταμηνύσῃ, ἐλεύθερος γίνεται, ἢ ἐὰν τὴν ἥδη συγχωρηθεῖσαν ἀρπαγὴν ἀπελέγῃ, Λαште равь похыштеније д'евице възвѣститъ, свободъ бывајетъ, или аште проштен'но быв'шее похыштеније облигитъ).⁸

- “A slave who abducts or hides somebody else's harlot is not guilty, neither as a thief, nor as an abductor, because he did not do that with the intent to steal, rather from lust; a high official shall punish him with a fine and bring him to reason” (Ο δούλην ἀλλοτρίαν, πόρνην οὖσαν, ἀρπάζων ἢ κρύπτων, οὗτε ώς κλέπτης, οὗτε ώς ἀνδραποδιστής ἐνέχεται· οὐ γάρ κλοπῆς ἀλλ' ἡδονῆς χάριν τοῦτο πεποίκη· πλὴν εἰς χρήματα ζημιοῦται παρὰ τοῦ ἄρχοντος, καὶ σωφρονίζεται, Равь тогждоуго блouгднициou соуштоу похыштае или крык, ни же тако плаћн' ѹia повин'нь юсть; не бо тат'бы ради, нь слости ради се сътворы; обаѹе въ иманїе отъштетекајетъ се отъ кнеза, и ц'влоомоудрить се).⁹
- “Justinian's Novella xvii forbids virgin abductors to be concealed in the places of asylum” (Η δὲ Ιζ. Ἰουστινιάνειος Νεαρὰ ἀπαγορεύει ὅρους ἀσυλίας φυλάττεσθαι τοῖς ἀρπαξιτῶν παρθένων, Сед' мънадесета же йустинијанова Новала отрицајетъ прѣдѣлы неизраденїа съхранати хыштникомъ д'евицъскыимъ).
- “On Easter Days virgin abductors must be imprisoned and bound” (Αλλὰ καὶ ἐν ταῖς ἡμέραις τοῦ Πάσχα, οἱ τῶν παρθένων ἀρπαγες ἐγκλείονται καὶ δεσμοῦνται, Нь и въ дънехъ свѣтыи пасхи д'евицъи похыштници ڇатварајотъ се и венокутъ се).¹⁰

Dušan's Law Code has no article regarding the crime of abduction. It seems that the strict provisions of Matheas Blastares' *Syntagma* were sufficient. It is possible that marriage by abduction existed as a custom in mediaeval Serbia, and that these rules were kept and meticulously reworked to fight against that custom.¹¹

Abduction was also considered a crime of violence in the legal acts promulgated after the death of Tsar Dušan. Despot Stefan Lazarević, for example, in the charter presented to the monasteries Tismany and Voditsa (1406), says that any man who has left the monastery's manor may come back, except persons who have committed the crimes of homicide, larceny or abduction (д'евицо-похыштитељ).¹²

8 *Basilika*, XLVIII, 18, 3.

9 *Basilika*, LX, 12, 39.

10 Ed. Ralles and Potles, pp. 102–104; ed. Novaković, pp. 105–107.

11 B. Marković, “Krivično delo otmice devojaka i žena u zakonodavstvu cara Stefana Dušana” [“Crime of Abduction in Tsar Stefan Dušan's Legislation”], Ič 56 (2008), pp. 241–260.

12 Ed. Mladenović, p. 352.

2 Fornication (πορνεία, βλογδъ)

Fornication is sexual intercourse between two persons not married to each other. This offence is variously defined in modern law, and it is considered a crime in some States. Byzantine law severely punished sexual intercourse between a man and unmarried woman or widow,¹³ as a crime against morality.

The *Syntagma* of Matheas Blastares contains three chapters that concern it: П-15, “On fornication” (Περὶ πορνείας, Ο βλογδὲ); П-16, “On those who wanted to commit fornication, but they did not” (Περὶ τοῦ πορνεύσαι ἐπιθυμήσαντος, καὶ μὴ πράξαντος, Ο ποζελαβ’шимъ съблудити и не съдѣлавшимъ); П-17, “On pimps” (Περὶ πορνοβοσκῶν, Ο βλογδηνιզопасцехъ).¹⁴ However, Chapter П-15 exposes only the numerous ecclesiastical rules on fornication and only one law which “orders that the one who has as concubine an irreproachable woman, he has to marry her, according to the law. And if she has carnal knowledges with other men and she is not satisfied with one person, let her be expelled from the fornicator’s home” (Ἄλλ’ ὁ νόμος, τὸν παλλακῆ σώφρονι χρώμενον, ἀναγκάζεσθαι κελεύει ταύτην καὶ νόμῳ γάμου λαβεῖν· τὴν δὲ καὶ ἑτέροις μιγνυμένην, καὶ μὴ τῷ ἐνὶ ἀρκουμένῃ προσώπῳ, καὶ τῆς οἰκίας τοῦ πορνεύοντος ἔξωθεισθαι, Ή̄ законъ, иже посаднику цѣломоу дръноу имвѣ, поноужденоу быти ѧмоу повелѣваєть и закономъ брака сю поисти; а иже и съ другыми смѣшашитеи се и не довѣемои единимъ лицемъ, и изъ домоу блогдештаго изриноути се).¹⁵

Chapter П-16 has also only the ecclesiastical rules concerning the attempt to commit a crime of fornication and only one law which says “that it is better that sins remain unpunished, than that some persons who are not guilty be punished” (Φησὶ δὲ καὶ ὁ νόμος· Κρεῖσσον τὰ ἀμαρτήματα καταλιμπάνειν ἀνεχδίκητα, ἢ τινας ἀναιτίως κολάζεσθαι, Рече же и законъ: Лоучше юсть съгрѣшениѧ оставляти неотмѣнна неже-ли нѣкыи не повиниѣ моучити).¹⁶

Chapter П-17 contains Canon 86 of Sixth Ecumenical Council, which orders that clerics who had gathered and held harlots were to be excommunicated and expelled (χληρικοὺς μὲν ὅντας, καθαιρεῖ· πρὸς ταύτην, κελεύει καὶ ἀφορίζεσθαι, причтынкы оубо соуште, къ извръженю повелѣваєть, и отлоучати соугоубо); if laymen, they were to be excommunicated (λαῖκοὺς δὲ, ἀφορίζεσθαι, людсъи же отлоучати). Canon 86 was then followed by four laws:

¹³ *Procheiron*, xxxix, 44, 59–61, ed. Zepos, vol. II, pp. 220, 223–224.

¹⁴ Ed. Ralles and Potles, pp. 433–440; ed. Novaković, pp. 458–465.

¹⁵ Ed. Ralles and Potles, p. 434; ed. Novaković, p. 459.

¹⁶ Ed. Ralles and Potles, p. 439; ed. Novaković, p. 464.

- “He who knows that his wife is a harlot, and keeps silent [about that], is a pimp” (Ο ειδώς πορνεύεσθαι τὴν ἐαυτοῦ γυναῖκα, καὶ σιωπῶν, πορνοβοσκός ἔστιν, Βέδηι βλογδεῖσθο γενού μαλίχε, βλογδηιζοας’ цъ юстъ).
 - The second law says that children born of a debauchery (Οἱ ἐκ πορνείας γεγεννημένοι, Иже отъ блогуда родивши се) may inherit from their mother and their maternal relatives. “And a harlot, who has both, legitimate children and bastards [children born out of lawful wedlock, i.e. of a fornication], may not leave anything to her bastards, neither in her lifetime, nor on her death-bed” (ἡ δὲ ἰλουστρία νομίμους ἔχουσα παῖδας καὶ πορνογενεῖς, οὐδὲν δύναται παρασχεῖν τοῖς πορνογενέσιν, οὔτε ζώσα, οὔτε τελευτώσα, блогдештия же, законънъе имоуши дѣти и блогдородниe, ничто же можетъ подати блогдородныимъ ни же жива соуши, ни же оумироуши).
 - The third says that inheritance of a bastard does not belong to the father's relatives, because it was said that he has no father,¹⁷ and the inheritance shall be passed on to his mother and uterine brothers.¹⁸ The laws and canons on marriage recognise relationship by fornication, so if the relatives by fornication enter into a marriage, they shall be punished as those who have committed incest (Η τοῦ πορνογενοῦς κληρονομία οὐκ ἀνήκει τοῖς πρὸς πατρὸς συγγενέσιν, οὐ γάρ λέγεται ἔχειν πατέρα, τῇ μητρὶ δὲ αὐτοῦ καὶ τοῖς ὄμοιμητροῖς ἀδελφοῖς· οἱ δὲ περὶ γάμων νόμοι, καὶ οἱ κανόνες ἐπιγινώσκουσι καὶ τὴν ἐκ πορνείας συγγένειαν, καὶ συναπτομένους τοὺς ἐκ πορνείας συγγενεῖς, ως τοὺς ἐξ ἐννόμων γάμων αἰμοιξίᾳ περιπεσόντας κολάζουσιν, Благодорданаго наследие не належить отчевѣмъ съродникомъ, не бо глаголють се имѣти отца, матерь же юго и юдиноматернъи братіамъ; закони же иже о брацѣхъ и правила повелѣваютъ и юже отъ блогуда съродство съблюдати, и съвѣкоуплатаюштихъ се иже отъ блогуда съродникъ, іакоже иже отъ законныихъ браковъ въ кръвомѣство въпадшихъ моучити).
 - The fourth law concerns concubinage, which is recognized by the law; the one who has the honest woman as a concubine and who confirms that publicly seems to have her as consort. If that is not the case, he is guilty of fornication (Ο μέντοι παλλακισμὸς νόμιμός ἔστιν· ὁ γὰρ γυναῖκα σεμνὴν παλλακεύμενος, καὶ ποιῶν ἐν ἐκμαρτυρίᾳ τοῦτο κατάδηλον, ως γαμетὴν αὐτὴν ἔχειν δοκεῖ· εἰ δ' οὖν, ἀσέλγειαν πρὸς αὐτὴν πλημμελεῖ, Посадничество же законно юстъ, иже во жену чистоу посаднику воде и творе въ освѣдомованїи се іавленно, іакоже соупроужжнику тоу имѣти свидить се; аще ли же ни, блогдомъ къ нен съгрѣшають).¹⁹

¹⁷ The mediaeval rule was: *Bastardus nullius est filius, aut filius populi* ("A bastard is nobody's son, or the son of the people").

18 A uterine brother or sister is one born of the same mother, but by a different father.

¹⁹ Ed. Ralles and Potles, pp. 439–440; ed. Novaković, p. 465.

It is noticeable that none of those laws have a criminal penalty. However, the most important rule on fornication, containing a fine for a seducer, was listed by Matheas Blastares, who was not a great lawyer, in Chapter Γ-30, entitled “On those who rape virgins”. The law, taken from the *Procheiron* (xxxix, 65), orders that the one who had sexual intercourse with a virgin with her consent may enter into a marriage with her if this is agreed to by her parents. But, “if the parents of only one person do not consent, and a seducer is rich, he has to give one *litre* of gold to the seduced girl; if he is poor, half of his property; if he is very poor, let him be flogged, cropped and banished” (*εἰ δὲ τοῦ ἐνὸς προσώπου οἱ γονεῖς τοῦτο οὐ καταδέχονται, εἰ μὲν εὔπορος ἔστιν ὁ φθορεὺς, τῇ φθαρείσῃ κόρῃ διδότω λίτραν μίαν χρυσίου· εἰ δὲ ἐνδεής, τὸ ἡμισυ τῆς ὑποστάσεως αὐτοῦ· εἰ δὲ παντελῶς ἄπορος, τυπτόμενος καὶ κουρευόμενος ἐξορίζεσθω, αἴτη λι ιεδινού λιца ροδιτελεί σε νε πρικεμιλοτη, αἴτη ουβο βογατη ιεστη ραстливы, ρаstлившен се отроковици да дасьт лигроу иединоу злата; аште ли ништи, поль стежанїа юго; аште ли отноудь оубогъ, выкемъ и оstryздаюмъ да затакають се).*²⁰ Finally, the *Syntagma* contained an even more specific rule regarding a man's fornication with his underage betrothed in Chapter M-13 (again in an inadequate place), entitled “On betrothal” (Περὶ μνηστεῖς, Ο οερογγενη). If a man were to deflower his betrothed before her majority, i.e. the age of 13, her parents could break off the engagement and receive a third of his property (the same amount as for rape); if they did not want to break off the betrothal, the lascivious man had to wait the legal term for entering into marriage (ἀνάμενέτω τοῦ γάμου τὸν χρόνον, да ожидаетъ брака врѣмѣ).²¹ The rule was accepted in article 139 of Dušan's Law Code, in the Ravanitz manuscript.²²

Dušan's Law Code contains only one provision on fornication, regulating a very specific form of illicit sex, in article 54 under the title “Of the fornication of a noblewoman” (Ω βλογδѣ владыке): “And if a noblewoman commit fornication with her man let the hands of both be cut off and their noses slit” (Ако ли владыка блогдъ оучини съ своимъ чловѣкѡм, да им се вѣма роукѣ штѣвѣ, и носъ оуреже).²³ The phrase “her man” signifies a commoner (*sebar*), most likely subjected to the noblewoman's husband or father, unless she was

²⁰ Ed. Ralles and Potles, p. 202; ed. Novaković, p. 211. The same provision is in the second part of article 138 of Dušan's Law Code, Ravanitz transcript, but the penalty is different: “if he is very poor, his nose shall be cut off, he shall be imprisoned and flogged” (аще ли ест нѣп и ѹбогъ, да вѣдет штѣризаем носомъ, и да се заточит и биет). *Zakonik cara Stefana Dušana*, vol. III, p. 334.

²¹ Ed. Ralles and Potles, p. 374; ed. Novaković, pp. 393–394.

²² *Zakonik cara Stefana Dušana*, vol. III, p. 334.

²³ Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 46; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

a widow. This rule is a compound of two similar clauses from the *Procheiron* (xxxix, 43 and 44), regarding a married lady's (γυνὴ ὑπανδρος, жена ѿтъ мужа) and a widow's (γυνὴ μὴ ἔχουσα ἄνδρα, жена не имѹчи мѹжѧ) intercourse with her slave (δοῦλος, рабъ),²⁴ already introduced into Serbian law in the *Zakon gradski*, but the penalty is much harsher (cutting off of both hands, Byzantine χειροκόπεω). Again, the Byzantine rules were obviously deemed insufficiently severe for such an insult to the honour of the nobility. That was the reason why Dušan's lawyers replaced the words "married lady" and "widow" with "noble-woman" (*vladika*), and the expression "slave" (*rab*) with "her man" (commoner, serf, villager or other dependent).

However, the Ravanitza copy also has two articles referring to fornication based on Matheas Blastares' *Syntagma*, but considerably modified:

Article 140:

If a man commit fornication with somebody else's wife, with a consent of that woman, and if he was married too and was caught, he has to pay 100 perpers, because he put to shame his comrade; and that woman shall be punished and tortured as a harlot.

Аще чловѣкъ блудъ сътворитъ съ женою чуждѣю мѫжатою, и то блудетъ съ хотениемъ жене тое, а и тои чловѣкъ блуде иженіенъ, те га Ѹфате, да платитъ; Ѣ. пер'перь, понеже сътвори срамотъ дрѹгѹ своемѹ. а та жена да примитъ казанъ и мѹчение ѹако блуднїца.

If a man was not married, and has committed [fornication] with a consent of that woman, let him pay 30 perpers; a woman shall be guilty as a harlot and her husband shall not receive her again in his home.

Аще ли чловѣкъ не блудетъ иженіенъ, и тои сътворитъ хотениемъ жени тое, да платитъ; Ѣ. пер'перь. а тѹ въсѹ винѹ да под'лежитъ жена та ѹако блуднїца. и тои мѹжъ да се не приемлетъ въ домъ свои).

Article 141:

If she was a widow and she committed [fornication] by her own will, both of them have to pay *vražda*. If a man has committed [fornication] by force, let him pay 300 perpers and let him be beaten.

²⁴ Ed. Zepos, vol. II, pp. 221–222; ed. Dučić, pp. 404–405; ed. Petrović, p. 324b.

Лице ли ѕодет въдовица, и сътворить съ хотением, юбо да подлежетъ враждъ. лице ли чловѣкъ сътворит то насилиемъ, да платитъ; т. перпеть, и да га бїютъ).²⁵

Although the editors of the Ravanitz text speak on fornication, in the wording of articles 140 and 141 they confused three crimes: fornication, adultery and rape.

3 Adultery (*μοιχεία, прѣлюбодѣиство*)

Adultery is voluntary sexual intercourse by a married person with someone other than his or her spouse or by an unmarried person with a married person.²⁶ In theory, it is easy to differentiate adultery from fornication (sexual intercourse between two unmarried persons), but a certain confusion between the two terms was widespread in Christian societies. Firstly, some deviations from the model frequently existed, e.g. a concubine's infidelity being classified as adultery, but a married man's intercourse with an unmarried woman as fornication. Secondly, the terms were sometimes used interchangeably.²⁷

Byzantine law punishes adultery very severely, and Matheas Blastares introduced in his *Syntagma* Chapter M-14, entitled “On adultery” (Περὶ μοιχείας, Ο πρѣлюбодѣиствѣ).²⁸ At the beginning, this chapter contains eight ecclesiastical rules on adultery: Gregory of Nyssa’s Rule 14, Canon 20 of the Synod of Ancyra, Rule 61 of Saint Apostles, Canon 8 of the Council of Neocaesarea,²⁹ and the Rules 34, 37, 39 and 56 of Basil the Great.³⁰ These ecclesiastical rules were followed by 13 laws. Two of them refer to bigamy, and they were erroneously placed in this chapter. The most important provisions of these laws are:

²⁵ *Zakonik cara Stefana Dušana*, vol. III, p. 334.

²⁶ Gregory of Nyssa (*PG*, vol. 45, 228C) defined fornication (*πορνεία*) as the satisfaction of desire without offending another person, whereas adultery (*μοιχεία*) is “a plot (*ἐπιβουλή*) and injury (*ἀδικία*)”.

²⁷ Cf. A.E. Laiou, “Sex, Consent and Coercion in Byzantium”, in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. A.E. Laiou (Washington D.C. 1993), pp. 109–222, especially pp. 114–120.

²⁸ Ed. Ralles and Potles, pp. 374–379; ed. Novaković, pp. 394–399.

²⁹ Under the title “Canon 8 of the Council of Neocaesarea” Matheas Blastares put together Canons 8 and 9 of the same Synod. Neocaesarea (Greek Νεοκαισάρεα) was an episcopal see in the late Roman province of *Pontus Polemoniacus*. It is the modern city of Niksat in Tokat Province, Turkey, with a population of 32,692.

³⁰ Ed. Ralles and Potles, pp. 374–377; ed. Novaković, pp. 394–396.

- “The one who has committed adultery with a woman cannot enter into a legitimate marriage with her” (Ο ἐπὶ μοιχείᾳ γυναικὸς κατηγορηθεὶς οὐ δύναται ταύτην γαμετὴν ἀγαγέσθαι, *Иже о прѣлюбодѣиствѣ жены оглаголанъ быивъ, не можетъ сию на бракъ привести*).³¹
- “We order that all those who determine that their wives are adulteresses, and do not divorce from them, must be punished. A man who did not put away his wife who has committed adultery, is a pimp, i.e. a guardian of harlots” (Πάντας, ὅσοι τὰς γυναῖκας αὐτῶν μοιχευομένος εὐρίσκοντες μὴ ἀπολύουσι, τιμωρεῖσθαι κελεύομεν· πορνοβοσκός ἔστιν, ὁ τὴν ἐαυτοῦ γαμετὴν μοιχευθεῖσαν μὴ ἀπολύσας, οὐ μὴν ὁ ψιλῶς ὑποπτεύσας, *Въсѣмъ иелици жены свое прѣлюбодѣиство твореште обрѣтатиша, не поуштають, томимомъ бытии повелѣваю; издадѣвъцъ есть, рѣкше блогднициопасъцъ, иже своего женоу прѣлюбовы сътворишоу не поустивъ, а не иже простѣ омишление прикемъ*).³²
- In the next law Matheas Blastares refers to Justinian's *Novella CXVII*,³³ which orders that a wife who has committed adultery, after being punished with appropriate penalties, has to be sent to a monastery. Her husband, if willing, has a right to receive her back within the term of two years. If the husband died within this two-year cooling-off period without having received back his wife, “she was obliged to receive the tonsure and to take a veil” (κελεύομεν ἀποκείρεσθαι τὴν γυναῖκα, καὶ τὸ μοναχικὸν σχῆμα λαμβάνειν, *поселѣвають постригти се женѣ и иноческии обрадъ въсприемати*).
- We order that a husband who accused his wife for and found out that she had committed adultery, is entitled to retain the gift before marriage and the dowry, after the divorce (Εἰ περὶ μοιχείας ὁ ἀνὴρ κατηγορήσας τῆς γυναικὸς ἀπελέγξει, τηγικαῦτα, χωρισμοῦ γενομένου, ἔχειν τὸν ἄνδρα κελεύομεν, πρὸς τῇ πρὸ γάμου δωρεᾷ, καὶ τὴν προίκα; Λιπτε ο прѣлюбодѣиствѣ моужъ оглаголавъ свою жену облигитъ, тогда, разложученю быившоу, имѣти моужоу повелѣваю въ иже прѣжде брака дароу и прикюю). Besides that if the marriage was childless, a husband was to receive out of the wife's remained property one third of the value of her dowry. If they had children, her dowry and her other property was to be kept for the children. An in flagranti adulterer as well as the adulteress were to be punished according to the law. If an adulterer was married, his wife shall retain her dowry and the gift before marriage; the remaining property of the adulterer is to be inherited by his collaterals up to and within the third degree. If he has no collaterals, his property

³¹ *Basilika*, VI, 19.

³² *Basilika*, LX, 38, 30.

³³ In fact it is Justinian's *Novella CXXXIV*, 10.

- shall be taken by the State treasury (προσκυροῦσθαι ταύτην τῷ δημοσίῳ; възимати сие въ цариноу).³⁴
- “Both adulterers, after being flogged and shorn, let their noses be slit. Participants and aiders in such blasphemy, after being flogged and shorn, were to be sent into eternal exile” (Οἱ μοιχοὶ, τυπτόμενοι καὶ κουρευόμενοι φίνοκοπεῖσθωσαν· οἱ δὲ μέσοι καὶ ὑπουργοὶ τοῦ τοιούτου ἀσεβήματος γεγονότες, τυπτόμενοι καὶ κουρευόμενοι, διηνεκεῖ παραπεμφθῆτωσας ἔξοριά, Πρέβλιοβοδѣниe, бијеми и остривдаеми носовы да оурѣжоутъ се имь; срѣднии же и слѹжители таќоваго неѹстїа бывшe, бијеми и остривдаеми всегдашињемоу да отсилајути се зато-ченнио).³⁵
 - Novella xxxviii of Emperor Leo the Wise punishes adulterer and adulteress with the slitting of the nose; a husband of an adulteress can retain a dowry and she has to be sent in a monastery and has to take a veil, even without her consent. A dowry and the remaining property shall be distributed between her children and monastery; if childless, then between her parents and other collaterals.
 - It will be considered adultery not only in the event of the seduction of somebody's legitimate wife, “but also in the case of illegitimate marriage, betrothal and concubinage” (καὶ ἀθεμίτου γάμου, καὶ μνηστείας, καὶ παλλακισμοῦ, нь и о несътавномъ и везакон'номъ брацѣ и оброученїи и наложниѹствѣ).³⁶
 - “The one who seizes an adulterer with his wife during sexual intercourse, even if he kills him, shall not be punished as a murderer. A husband can only kill an adulterer in his home, and only if he is a wandering entertainer³⁷ or someone who is without honour. Husbands are not allowed to kill their wives—adulteresses” (Ο τὸν μοιχὸν μετὰ τῆς ιδίας γυναικὸς ἐν συμπλοκῇ καταλαβὼν, ἐὰν συμβῇ αὐτὸν ἀνελεῖν, οὐ εὐθύνεται ως ἀνδροφόνος· ἐν μόνῳ γὰρ τῷ ιδιῷ οἴκῳ ἐπ’ αὐτοφώρῳ δύναται φονεύειν τὸν μοιχὸν ὁ ἀνὴρ, καὶ τοῦτον σκηνικὸν ἡ ἀτιμον ὅντα· οὐ δέδοται δὲ τοῖς ανδράσι φονεύειν τὰς μοιχευθείσας αὐτῶν γυναι-

³⁴ *Basilika*, xxviii, 7, 1.

³⁵ *Procheiron*, xxxix, 45. The Greek text provides as a penalty “eternal exile”, while the Serbian text says “eternal imprisonment”. I use the Greek translation, because in Byzantine law life-long imprisonment did not exist as a punishment.

³⁶ *Basilika*, lx, 37, 15.

³⁷ The Serbian text uses the word *skomrah* (скомрахъ), which is obsolete in modern Serbian. A *skomrah* was a wandering entertainer, musician, like *ioculator* and *jongleur* in West-European countries. The *Nomokanon* of Saint Sabba uses the German word *Spielman* (шпильманъ) as an equivalent of the Greek term μίνος, meaning player, performer, actor. See M. Cvetković, “Skomrah” and N. Milošević-Đorđević, “Špilman”, in *LSSV*, pp. 672–673 and 824–825.

хас, Иже прѣлюбодѣа съ своєю женою въ съплетени постигъ, аще приключиТЬ се того оубити, не обвиноуєть се яко моужеоубїца; въ юдиномъ бо своемъ домоу, оуиевъстъ юнь, можетъ оубивати прѣлюбодѣа моужъ и сего скомраха или бесустьна соуща; не дасть же се моужемъ оубивати прѣлюбодѣемыи ихъ жены).³⁸

- “A wife can be accused of adultery according to the statements of five witnesses; they must be her husband, her father, her brother, her paternal uncle and her maternal uncle” (θείος πρὸς πατρὸς, θείος πρὸς μητρὸς, стриць, оүкець).³⁹ If she was accused by other persons and the accusation was proved, the “adulteress shall be punished by the slitting of the nose” (ἐκτομὴ τῶν ρίνων οἱ μοιχοὶ τιμωροῦνται, отрѣзаниемъ носовъ прѣлюбодѣниe томими соуть). But if the accusation was made with hostility, the accusers would be punished with the same penalty; “however, a wife who confesses that she has committed adultery shall be not punished, which is strange” (ἀλλ’ οὐδὲ αὐτὴ ἡ γυνὴ ὅμολογοῦσα μοιχευθῆναι καταδικάζεται, ѳпер какъ єсті каинόν, ны ни самаа жена исповѣдаюшти прѣлюбодѣиствовать се осуждають се. Иже оубо и юсть чюдно).⁴⁰
- “He who has committed adultery with the wife of his slave, or with a married but promiscuous woman, who has slept with many men, shall not be accused, neither for a crime of adultery nor fornication. The man shall be punished as an adulterer if the wife was raped without her consent, while her hands were held, even if she was ashamed to tell her husband what happened to her. The wife shall not be punished” (ὁ μοιχεύων τὴν γυναῖκα τοῦ ἀποδούλου αὐτοῦ, καὶ ὁ μοιχεύων πολύφθορον καὶ πολύκοτον ὑπανδρον, τῷ τῆς μοιχείας ἐγκλήματι οὐχ ὑπόκειται, εἰ μὴ τῷ τῆς πορνείς· καὶ ὁ μὲν ἀνὴρ τιμωρεῖται ὡς μοιχὸς, ἡ δὲ γυνὴ οὐκ εὐθύνεται, ὅτε ὄκουσαν καὶ βεβιασμένην αὐτὴν χειρὶ κρατήσει, εἰ καὶ αὐτὴ ἐρυθριῶσα, τὸ γεγονός εὐθὺς οὐκ ἀνήγγειλε τῷ ἀνδρὶ αὐτῆς, прѣлюбовы дѣни жену рабицишта своєго, и прѣлюбовыдѣни многорастлѣн'ноу и многоложноу моужатицу, иже прѣлюбодѣиства съгрѣшению подлежить, развѣ юже блouда оубо моужъ томимъ юсть яко прѣлюбодѣи, жена же не обвиноуєть се, иогда безъ воли и понужден'ноу, тоу роукюю оудржжитъ, аште и та стыдешти се быв'шне авіе не възвѣсти моужеви своємоу).⁴¹

³⁸ Procheiron, XXXIX, 42.

³⁹ Serbian has two different terms for paternal and maternal uncle. A father's brother is *stric* (*стриц*), while a mother's brother is *ujak* (*ујак*).

⁴⁰ *Basilika*, LX, 37, 68.

⁴¹ *Basilika*, LX, 37, 39, 40, 62; *Syntagma*, ed. Ralles and Potles, pp. 377–379; ed. Novaković, pp. 396–399.

Among other Serbian legal sources, only article 30 of so-called “*Justinian’s Law*” treats adultery: “If someone seizes a foreign husband with his wife, and retains the wife, and leaves the husband, let him be punished as a thief and traitor” (Лицеј ксто оухвати мушка съ својою женово, па жен ё оудържит, а мушка оупоустит, да се кажет яко татъ и издаваць).⁴² However, it is not clear what type of penalty there would be, because in mediaeval Serbia thief and traitor were not punished in the same way.

4 Bigamy

Bigamy is the state of a man who has two wives, or a woman who has two husbands, living at the same time. In modern law it is the criminal offence of wilfully and knowingly contracting a second marriage (or going through the form of a second marriage) while the first marriage, to the knowledge of the offender, is still subsisting and undisolved.⁴³ In Byzantine law, bigamy was the state of a man who has two wives, living at the same time.

Matheas Blastares introduced in his *Syntagma* two laws on bigamy, but he placed them in Chapter M-14, referring to adultery:

- “The one who has two wives has to be flogged and the concubine to be chased away together with the children to whom she gave birth” (Ο δύο γαμετὰς ἔχων τυπτέσθω παρ’ αὐτοῦ τῆς ἐπεισάκτου γυναικὸς, μετὰ τῶν τεχθέντων ἐξ αὐτῆς παιδῶν, Ιήε δε τέ βέβης имъ, да виенъ боудеть, отгонимъ отъ ииего привъводиби жењъ съ рожденъими отъ ииие дѣтми).
- “The one who dares to have two wives, not according to the law but from lust, is guilty of adultery; because, he who coupled with a free woman while his prior spouse is still alive shall be condemned as a fornicator; but, if he has brought a second wife after entering into marriage, he shall be punished as an adulterer” (Ο δύο γαμετὰς ἔχειν πειραθεῖς οὐ νόμῳ, ἀλλὰ φάκτῳ προαιρέσεως, ὑπόκειται τῷ τῆς μοιχείας ἐγκλήματι· ὁ μὲν γάρ μετὰ ἐλευθέρας συμπλακεῖς, ζώσης τῆς αὐτοῦ γυναικὸς, ὡς πόρνος καταχρίνεται· ὁ δὲ κατὰ γάμου κοινωνίαν δευτέραν ἀγόμενος, ὡς μοιχὸς τιμωρεῖται, Ιήε δε τέ βέβης имъти покоусиъ се не закономъ нъ правомъ произволенїа, подлежит прѣлюбодѣиства съгрѣшению, иже бо оубо съ свободною съплетъ се живѣ соушти жењъ иего, яко же блоудникъ осуждаиетъ се; а иже по браку приобщенїа в’тороую приведи, яко прѣлюбодѣи томимъ юестъ).⁴⁴

⁴² Ed. Marković, p. 60.

⁴³ *Black’s Law Dictionary*, p. 163.

⁴⁴ Ed. Ralles and Potles, p. 379; ed. Novaković, pp. 398–399. Cf. *Basilika*, LX, 37, 84.

The Serbian editors of the *Abridged Syntagma* sorted these two laws into a separate Chapter M-4, entitled “On those who have two wives” (О имоуцимъ двѣ женѣ).⁴⁵

5 Abominable and Detestable Crimes against Nature

Abominable and detestable crimes against nature were in Byzantine law sodomy and pederasty. Matheas Blastares has several provisions concerning those crimes.

Sodomy (*sodomia ratione generis*) is the carnal copulation (sexual intercourse) by a man or woman with a beast, and Matheas Blastares defined it in Chapter A-5, under the title “On sodomites, i.e., those who are committing fornication with animals” (Περὶ ἀλογευσαμένων ἡτοι ζωοφθόρων, Ο везгловствовавшихъ, рече животнага растлебваштихъ).⁴⁶ At the beginning Chapter A-5 exposes the ecclesiastical rules referring to sodomy: Canons 16 and 17 of the Synod of Ancyra, Rule 63 of Basil the Great and the Third Rule of Gregory of Nyssa. All those rules contain severe *epitimions* (Greek ἐπιτίμιον, a penalty imposed on a penitent by the priest following sacramental confession; ecclesiastical punishments for some spiritual offence) as repentance of sins to provide reconciliation with God through means of healing.⁴⁷ The chapter finishes with only one law, ordering: “To those who have committed fornication with unreasonable animals, let their shameful members be cut off” (Οι ἀλογευσάμενοι ἡτοι κτηνοβάται, καυλοκοπείσθωσαν; везгловствуюштеи сирбѹ скотоложци срамнихъ оудовь да отсекоутъ се).⁴⁸

The Poljica Statute mentions sodomy in article 84a, but provides a different penalty: “If someone has committed an improper sin, which is called the sin of sodomy, be it male or female ... let him be burned without any mercy” (Ако би се тико наша Ѹ грихъ неподоби, ча се зове грихъ содомски, али би била мѹшка глава али женска ... има се сажгати преза всакога смилован’ба).⁴⁹

Pederasty (*παιδεραστία, ἀρρενομιξία, ἀρρενοκοιτία, мoughенествовъство, sodomia ratione sexus*) as a form of sodomy is the carnal copulation of male with

45 Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 491 and 539.

46 Ed. Ralles and Potles, pp. 78–79; ed. Novaković, pp. 81–83.

47 In the Eastern Orthodox Church *epitimion* were provided by special *epitimial nomokanons* (*libri poenitentiales*).

48 Ed. Ralles and Potles, p. 79; ed. Novaković, p. 83. The rule was accepted by article 128 of Dušan’s Law Code, Ravanitzia copy. See *Zakonik cara Stefana Dušana*, vol. III, p. 330.

49 Ed. Jagić, p. 90.

male, particularly of a man with a boy. It was common in the Late Roman Empire when an abundance of young slaves and eunuchs created favourable circumstances for its practice. Many Church Fathers inveighed against this form of sexual activity. Denounced by the Church as criminal and contrary to Holy Scripture, pederasty was prohibited by Justinian's *Novels* LXXVII and CXLI, which repeated the punishment of death by the sword decreed by the *Codex Theodosianus* (ix, 7,3). The same punishment was imposed by the *Ecloga* (xvii, 15) and *Ecloga aucta* (xvii, 6);⁵⁰ the latter exempted youths under 15 from the death penalty, sentencing them instead to flogging and confinement in a monastery. Ecclesiastical law punished the sin with two or three years of *epitimion*.⁵¹

Matheas Blastaes defined this crime in Chapter A-14, entitled "On pederasty" (Περὶ ἀρρένομανίας, Ο μογένειστος στεφ).⁵² The chapter contains Rules 7 and 62 of Basil the Great, the Third Rule of Gregory of Nyssa, one Rule of John the Faster (Ιωάννης Νηστευτής, Иоанъ Постникъ)⁵³ and only one secular law.⁵⁴

Dušan's Law Code has no provisions on pederasty, but article 38 of the so-called "*Law of Emperor Constantine Justinian*", the Byzantine-Serbian compilation dating from the last quarter of the 17th century, orders: "If the [male] person has unnatural sexual intercourse with another male, let them both be burned alive, except if one of them is younger than 12 years, because of his age" (Алије ксто с мъжаксимъ ли и поломъ блъдъ сътворить да се утнем обое сажежетъ, разве маныше што .ви. л'бть, по подоби възрастта).⁵⁵

6 Incest

Incest (αἵμομιξία, lit. "mixing of blood", Latin *incestus*, κρεομίκσι) is the crime of sexual intercourse or cohabitation between a man and woman who are related by consanguinity (blood) or affinity in such a way that they cannot legally marry. Affinity is the relationship that one spouse has to blood relatives of the other. In modern law a person is guilty of incest if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant. "Cohabit"

⁵⁰ Ed. Burgmann, p. 238.

⁵¹ See J. Herrin, "Homosexuality", in *ODB*, pp. 945–946.

⁵² Ed. Ralles and Potles, pp. 104–105; ed. Novaković, pp. 107–108.

⁵³ John IV, also known as John the Faster, was the 33rd Patriarch of Constantinople (582–595). He was the first to assume the title of Ecumenical Patriarch, and he is regarded as a saint by the Eastern Orthodox Church, which holds a feast on 2 September.

⁵⁴ The law was mentioned above in Chapter 16, section 1.

⁵⁵ Ed. Andréev and Cront, p. 53.

means to live together under the representation or appearance of being married. In common law, people could not marry the following relatives: a) *consanguinity*: mother or father, grandmother or grandfather, daughter or son, granddaughter or grandson, aunt or uncle, sister or brother, niece or nephew; b) *affinity*: stepmother or stepfather, step-grandmother or step-grandfather, stepdaughter or stepson, step-granddaughter or step-grandson, mother-in-law or father-in-law, grandmother-in-law or grandfather-in-law, daughter-in-law or son-in-law, granddaughter-in-law or grandson-in-law.⁵⁶

Byzantine law was more strict, adding to all existing prohibitions a spiritual relationship. Criminal penalties on incest were placed by Matheas Blastares in Chapter Γ (G) - 9, entitled “On unlawful and inappropriate marriages between relatives” (Περὶ γάμων παρανόμων καὶ ἀθεμίτων συγγενεικῶν, Οἱ βραζέχες ζακονοπρεπεῖς καὶ οὐκ εἰληπτοί).⁵⁷ At the beginning Mathaeas Blastares explains what types of unlawful marriages exist (Τῶν μὴ ἐννόμως γνησιμέων γάμων, Οἱ οὐκ εἰληπτοί βίβλοι): marriages contracted with relatives and heretics are called inappropriate (ἀθέμιτοι, οὐληπτοί); illegal (παράνομοι, ζακονοπρεπεῖς) are marriages between guardians and wards. If someone enters into a marriage with a maiden dedicated to God (ἀνατεθειμένης τῷ Θεῷ, σὺν εὐθύλογεν νοοῦσι θεοῖ), this type of marriages was called “condemned” (κατάκριτοι, οὐούγδεν νοοῦσι). “In Latin [language] illegal marriage is called *nefarios*, condemned *damnatos*, and inappropriate *incest*” (Λατινικῶς δὲ, οὐ μὲν παράνομος γάμος λέγεται νεφάριος, δὲ κατάκριτος, δαμνάτος, ἔγκεστος δὲ, οὐ ἀθέμιτος, λατινικοῖς καὶ ζακονοπρεπεῖς οὐδὲ βράκες γλαγολίεται οὐαφαροῖς, οὐούγδεν νοοῦσι καὶ δαμνάτονται, ιγνήσται καὶ οὐληπτοί).⁵⁸ Another title is “On clerics who enter into inappropriate marriages” (Περὶ κληρικῶν ἀθεμιτογαμούντων, Οἱ πριγκηπίσκοποι οὐληπτοί βραζέχοις), exposing three ecclesiastical rules. First, Saint Apostles Canon 19, saying that anyone who has entered into a marriage with their wife's sister, after divorce or the wife's death, cannot be a cleric. Every inappropriate marriage, related by consanguinity or affinity (πᾶς γὰρ ἀθέμιτος γάμος, εἴτε ἐξ αἵματος, εἴτε ἐξ ἀγγιστείας, βράκεις οὐληπτοί βράκες, λούσιος οὐληπτοί βράκες, λούσιος οὐληπτοί βράκες), has to be dissolved. Any cleric who contracted such a marriage would be banished from the clergy and punished with *epithemia*. Second, Rule 27 of Basil the Great says that every priest who entered into any type of unlawful marriages (blood relationship, marriage with a nun or ward) through ignorance cannot be a presbyter and must ask for repentance

56 Brown, *Legal Terminology*, p. 132; *Black's Law Dictionary*, p. 761.

57 Ed. Ralles and Potles, pp. 165–169; ed. Novaković, p. 177.

58 Ed. Ralles and Potles, p. 165; ed. Novaković, p. 172.

of sins. Third, Canon 26 of the Sixth Ecumenical Council says that any inappropriate marriage must be dissolved.⁵⁹

Under the title “On laymen who enter into inappropriate marriages” (Περὶ λαϊκῶν ἀθεμιτογάμοιντων, Ο λυδακύηιχν πελεπότνιο βραχεστηῖχν σε) we can find 12 ecclesiastical rules which strictly forbid illicit marriages.⁶⁰

Chapter Γ (G) - 9 finishes with five laws. Three of them refer to incest, all taken from the *Procheiron* and already known in Serbia from the so-called *Zakon Gradske* (translation of the *Procheiron*):

- Persons related by consanguinity (οἱ αἰκονίκται, κρεμτεῖци) who entered into a marriage, either parents with children or brothers with sisters, would be executed by sword. If they were in some other degree of kinship and they entered into a marriage—for example a father with his son's wife, or a son with his father's consort, i.e., stepmother, or a stepfather with his stepdaughter, or a brother with his brother's spouse, or an uncle with a niece, or a nephew with an aunt, or with two sisters, or with somebody else's mother and her daughter—and it was known that they had sexual intercourses, they would be flogged and their noses cut off.⁶¹
- If first cousins (ἔξαδελφοι, βρατογυέδε) entered into a marriage or had sexual intercourse, and even if children were born, or a father and son with a mother and daughter, or two brothers with two sisters, or two brothers with mother and daughter, they were to be separated and flogged.⁶²
- If someone lived in a marriage or in any other secret union with his godmother (συντέκνω, κούμοι), both consorts would have their noses cut off. If a wife was married, she had to be flogged.⁶³

The mildest punishment was prescribed for sexual intercourse with a mother-in-law—only *epithemia*, mentioned by the *Abridged Syntagma* (Chapters Γ-9 and M-6, entitled Ο ραστλύψιμος σε σε συντέκνω).⁶⁴

Dušan's Law Code does not contain any article referring to incest. It seems that the editors of the Code considered that the provisions presented in the *Procheiron* and *Syntagma* were sufficient.

59 Ed. Ralles and Potles, pp. 165–166; ed. Novaković, pp. 172–174.

60 Ed. Ralles and Potles, pp. 166–168; ed. Novaković, pp. 174–176.

61 *Procheiron*, XXXIX, 69.

62 *Procheiron*, XXXIX, 72.

63 *Procheiron*, XXXIX, 63. *Syntagma*, ed. Ralles and Potles, 168–169; ed. Novaković, pp. 176–177.

64 Cf. Solovjev, *Zakonodavstvo Stefana Dušana*, p. 492.

Crimes against Property

1 Larceny (*κλέμμα, κλοπή, furtum, татъба, крагја*)

Larceny is the wrongful taking and carrying away of the personal property of another with the intent to steal.¹ The essential elements of a larceny are an actual or constructive taking away of the goods or property of another without the consent and against the will of the owner or possessor and with felonious intent to convert the property to the use of someone other than the owner.²

Byzantine law has no definition of larceny, but it contains lots of provisions referring to this most frequent crime against property. Matheas Blastares introduced in his *Syntagma* the separate Chapter K-23, entitled “On larceny” (Περὶ κλοπῆς, Ο τατ̄β̄). The chapter contains three ecclesiastical rules (Rule 61 of Basil the Great, Rule 8 of Gregory of Nyssa and Rule 11 of Gregory Thaumaturgus) and 10 laws, mostly taken from the *Procheiron* and *Basilika*.³ We have to note that Byzantine and Serbian legal sources very often mention larceny and robbery in the same place.

- “Those who steal in any town, if they are free but poor (ἐλεύθεροι μὲν ὄντες, ἀποροι δὲ, свободни оубо соуште, ништи же) and if they did that only once, let them be flogged. If they are rich they have to return double value of the stolen property to the owner. If they would be caught twice, let them be banished. If they dare to do that for the third time, let them both hands be cut off (χειροκοπείσθωσαν, руцив да отсекоутъ се имъ).”⁴
- “If it was sold something that was recklessly taken or improper stolen, it must be dispossessed without compensation of the paid price” (Τὸ προπετῶς ληφθὲν, ἡ ἀτόπως κλαπέν, εἰ πραθείη, διεκδικεῖται, μὴ καταβαλλομένου τοῦ δοθέντος ὑπέρ αὐτοῦ τιμήματος; Иже неприлигнѣ възетое или везмѣстнѣ оукраденное аште продастъ се, въземлѧтъ се, непралтаємъ дам’нои о икемъ цѣнѣ).⁵

¹ According to the Roman *iurisconsultus* Paulus (D. XLVII, 2, 1, 3), *Furtum est contrectatio rei fraudulosa lucri faciendi gratia vel ipsius rei vel etiam usus eius possessionis. Quod lege naturali prohibitum est admittere* (“Theft is a fraudulent interference with a thing with a view to gain, whether by the thing itself or by use of possession of it. This natural law proscribes”). English translation by Watson, *The Digest of Justinian*, p. 251.

² Brown, *Legal Terminology*, p. 95; *Black’s Law Dictionary*, p. 881.

³ Ed. Ralles and Potles, pp. 332–334; ed. Novaković, pp. 351–353.

⁴ *Procheiron*, XXXIX, 54.

⁵ *Basilika*, XV, 1, 102.

- “If someone takes possession of a thing which has no owner, he is guilty for larceny, except if a former owner has finally abandoned it. Than, if a thief takes it, he is not guilty any more for larceny, because the thing has no owner. If someone thought that a thing was left purposely, and it is not, he is not a thief. If someone took a thing with the intention to return it to the owner, he is not guilty for larceny, even if he got a reward.”⁶
- “Who is stealing in the army, if he stole weapons, let him be flogged; if he stole a horse, let his both hands be cut off” (‘Ο κλέπτων ἐν φωσσάτῳ, εἰ μὲν ὅπλα, τυπέσθω· εἰ δὲ ἵππον, χειροκοπείσθω; Κραδῖι βὲ βοιςὶ, ἀστε οὐρογύιᾳ, δα βιην̄ βούδεται; ἀστε λι κονια, δα ὅτεβκουτε σε εμογ ρουζι’).⁷
- “If a master of slave-thief wants to keep his slave, he must indemnify the stolen; if he does not want, he has to give him to the damaged in full ownership” (‘Ο τοῦ κλέπτου δούλος κύριος, εἰ μὲν βούλεται ἔχειν τὸν οἰκέτην, τὸ ἀζήμιον ποιείτω τῷ τὴν κλοπὴν ὑποστάντι· μὴ βουλόμενος δὲ, τοῦτον αὐτῷ ἀποδιδότῳ εἰς τελείαν δεσποτείαν; Ικε ραβογ τάτεβι γοσποδίνη, ἀστε οὐρο χοιτέτην ιμβτη ραба, везъ тьштети да сътворить иже оукраденіе подем'шаго; не хоте же, сего томоу да подастъ в съврьшен'юе владыкъство’).⁸

The next law is similar to the first one, but it refers to the ox-thieving (ἀγέλας, воли): “those who have committed the crime only once, shall be flogged. If they do that for the second time, they shall be banished, and for the third time their hands shall be cut off”.⁹

The following lines of the Chapter K-23 are dedicated to robbery.

Serbian legal sources have no definition of larceny, and they use two different words to denote this crime: *krađa* (*крађа*, *крагија*)¹⁰ and *tatba* (*татба*, *татъба*)¹¹ = larceny, theft, stealing, thieving. *Krađa* is in use in modern Serbian, while *tatba* is obsolete. The verb “to steal” is *krasti* (*крассти*, *крастти*) or *ukrasti* (*украссти*, *Украстти*),¹² also in use in modern Serbian, while the substantive “thief” is *tat* (*mam*, *татъ*),¹³ rarely utilized today (the modern term is *lopor*,

6 *Basilika*, LX, 12, 42.

7 *Procheiron*, XXXIX, 53.

8 *Procheiron*, XXXIX, 55.

9 *Procheiron*, XXXIX, 56. *Syntagma*, ed. Ralles and Potles, pp. 333–334; ed. Novaković, pp. 351–352.

10 Saint Stephen's charter (Mošin, Ćirković, and Sindik, *Zbornik*, pp. 465, 468); King Dušan's chrysobull to the monastery of Htetovo from the year 1343 (ssA 13 [2014], p. 150).

11 Prince Lazar's treaty with Dubrovnik from 9 January 1387 (ed. Mladenović, p. 192).

12 Saint Stephen's charter; Gračanitza charter (Mošin, Ćirković, and Sindik, *Zbornik*, pp. 465 and 503); Prince Lazar treaty with Dubrovnik 1387 (ed. Mladenović, pp. 192–193).

13 Saint Stephen's charter, Charter of Archbishop Nikodim to Saint Sabba's from Jerusalem Kellion in Karea, from the year 1321 (Mošin, Ćirković, and Sindik, *Zbornik*, pp. 464 and

лопов). For the crime of larceny, Dušan's Law Code always uses the expression *krađa* (articles 149, 158), but for a perpetrator of the crime *tat*.

The penalty for larceny was a fine in cattle, obviously a relict from customary law. The only surviving evidence can be found in Saint Stephen's charter which says: "For mutual larceny [i.e. between the monastery's villagers] six oxen and for horse-thieving only six horses" (И крага мегюсобна .S. воловъ, а кон'ска самъ .S. конь).¹⁴ It is clear that the provision from Saint Stephen's charter had a local character. It was applicable only on the monastery's manor and for the monastery's villagers. So, if a thief was from the Saint Stephen's estate he had to give six oxen. A person who stole a horse had to return the stolen animal and give five horses more. It is certain that other rules were valid for different social classes, and that the fines were in money, but the sources are silent on that topic. However, King Stefan Uroš III Dečanski's chrysobull to the monastery of Saint Nicholas Mrački in Orehovo (9 September 1330) mentions a horse-thief (коњски татъ),¹⁵ but regrettably it does not prescribe a penalty for the crime.

Dušan's Law Code has no a single article that defines and treats larceny as a separate crime. However, several articles mention larceny, glancing references to something very well known. For example article 116, entitled "On finding" (О нађети), orders: "If any man find anything within my territory, let him not take it ... If any man take or seize anything, let him pay what a thief and robber would pay" (Кто ћо нађе оу царевѣ земли, да не оузме ... ако ли похвата или оузме, да плати ћо татъ, или гојсарь).¹⁶ Article 92 refers to *vindicatio*, the claiming of a stolen thing as one's own.¹⁷ Article 103 mentions larceny as one of the "pleas of the crown".¹⁸ Article 126 treats the collective liability of the neighbourhood (*okolina*, *околина*) for robbery and larceny.¹⁹ It seems that the editors of Dušan's Law Code thought that the provisions of Matheas Blastares' *Syntagma* were sufficient and clear. For that reason they did not consider it necessary to prescribe a penalty for larceny.

Mediaeval law marked a difference between *furtum occultum*—secret theft—and *furtum manifestum*—open theft where a thief is caught with the

527); King Stefan Uroš III Dečanski's chrysobull to the monastery of Saint Nicholas Mrački in Orehovo from the year 1330 (ssa 1 [2002], p. 58); Tsar Dušan's treaty with Dubrovnik, 20 September 1349 (ssa 11 [2012], p. 39).

¹⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

¹⁵ Edited by S. Mišić, ssa 1 (2002), p. 58.

¹⁶ Burr, "The Code of Stephan Dušan", p. 519; Novaković, *Zakonik*, 89; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

¹⁷ We shall comment on article 92 in the next chapter.

¹⁸ See next chapter.

¹⁹ See Chapter 17, section 1.

property in his possession.²⁰ For a thief caught in the act Slavonic laws have the expression *obličenijem* (обличеніем) or *licem* (лицемъ), which underlines a moment of taking in the act. In Old Serbian *lice* does not mean *person* (as it does in the modern language), but “a thing”, in the case of larceny a “stolen thing”—*corpus delicti*. A thief caught in the act was called *oblični tat* (облични татъ).²¹ This is clear from article 149 of Dušan’s Law Code:

And in this manner shall a brigand or thief be punished, who is taken in the act. He is deemed guilty if there be found on him a stolen thing, or if he be taken in the act of robbing or thieving, or when they are handed to the county or to the village, or to the headmen or to the lord who is over them, as written above. And these brigands and thieves shall not be pardoned but blinded and hanged.

Сим'зи ѿвразомъ да се каже гоусарь и татъ облични; и такози въ ѿблоченіе, ако се цю годѣ лицемъ оухвати оу ных, или ако ѿхвате оу гѹси или оу краги, или их прѣдадоу жѹпѣ, или селѡм, или господаремъ, или властѣлинъ кои є над нымъ, како юсть выше оуписано, тызин гоусаре и тати да се не помилоују, да се ислепе и ѿвбсе.²²

So, the penalty for a thief caught in the act (*oblični tat*) is blinding (cf. article 145, which treats the professional brigand and thief), what could also be a relict from customary law.

Articles 8, 9 and 10 of the so-called “Law of Emperor Constatine Justinian” treats new types of larceny. According to article 8, if someone steals in an orchard or a vegetable patch (г҃адїе, или ѿвоциє), let him be beaten and pay 12 perpers, if he has committed a crime for the first time; for the second and third time, he must pay 40 perpers. Article 9 orders:

If someone during the day, walking on the road enters in a vineyard or in an orchard and starts picking grapes and fruits, if he took it in his hands or in a scarf, he shall not be tried (тои не сѹдит се). If he picks it in a basket (Лицели вакоцъ береть), let him be beaten and let him pay 12 perpers. If

²⁰ According to Teodor Taranovski (*History*, vol. II, pp. 94–95), the Latin term *furtum manifestum* is not adequate, because every larceny connotes the secret taking of somebody else’s thing. He thinks that the German expression *handhafte That* is better.

²¹ As well as *oblični gusar*, a brigand taken in the act.

²² Burr, “The Code of Stephan Dušan”, p. 527; Novaković, *Zakonik*, p. 116; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

he picks during the night in purpose to eat, let him pay 20 perpers and be beaten. If he was picking to produce the wine, he has to pay all that he picked and 40 perpers more and he shall be beaten.

Article 10 prescribes:

If someone picks somebody else's corn by hand and takes it away in his hands, let him be beaten and not punished with other penalties. If he cuts with a sickle (*Аколи жнеть съпомъ*), he has to pay triple value and he has to be beaten. If he is very poor and if he did that forced by famine, let him pay for the damage done what the valuers (*дѣшевыници*) assess and be beaten but not so strongly (*ње вѣль ми*), in order not to do that again.²³

However, so-called "*Law of Emperor Constantine Justinian*" was composed in the 17th century and does not reflect the legal conditions of Serbian mediaeval law.

2 Sacrilege (*sacrilegium, ἱεροσυλία, свештен'ютат'ство*)

Sacrilege is larceny from a church, i.e. the stealing of sacred things, or things dedicated to sacred use (taking of things out of a holy place). In Byzantine law sacrilege is considered as grand larceny. Already *Ecloga xvii*, 15²⁴ prescribed penalties for sacrilege. The rule from the *Ecloga* was accepted by the *Procheiron*, and it became known in mediaeval Serbia through its Slavonic translation (*Zakon gradski*). The provision is as follows: "Whosoever enters, during the day or night, into the altar and steals something shall be blinded; if he steals in a church out of an altar, he shall be beaten like a profaner and than shorn and banished" ('Ο ἐν θυσιαστηρίῳ ἐν ἡμέρᾳ ἢ ἐν νυκτὶ εἰσιών καὶ τῶν ἐν αὐτῷ ιερῶν τι ἀφελόμενος τυφλούσθω· ὁ δὲ ἔξω τοῦ θυσιαστηρίου ἐκ τοῦ ἄλλου ναοῦ ἀφελόμενος, τυπόμενος καὶ κοιρευόμενος ἔξοριζέσθω, Иже въ алтарь въ дыне или въ ноци въходѣшъ штъ соѹцихъ въ немъ свещеніи неуто оукрадаје, да вслепитъ се; алије же вънѣшъ алтарь штъ инице цркве оукрадетъ ѿто, бијемъ и штрнженъ штъ прѣдѣль да иждениетъ се').²⁵

²³ Andreev and Cront, *La loi de jugement*, pp. 28–30.

²⁴ Ed. Burgmann, p. 230. Cf. D. XLVIII, 13, *De legem Iuliam peculatus et de sacrilegis et de residuis* (16 fragments).

²⁵ *Procheiron*, XXXIX, 58, ed. Zepos, vol. II, p. 222; ed. Dučić, pp. 407–408; ed. Petrović, p. 325b.

Matheas Blastares in his *Syntagma* created a separate Chapter I (ΙΧΘ) - 1, entitled “On holy equipment and sacrilege” (Περὶ ἱερῶν σκευῶν καὶ ἱεροσύλιας, Ο свештен'ныихъ съсѹдѣхъ²⁶ и свештен'нотат'ствѣ).²⁷ The first part of the chapter contains three ecclesiastical rules: Saint Apostles' Canon 72, Canon 10 of so-called “First-Second” Concil²⁸ and Rule 8 of Gregory of Nyssa. The exposed ecclesiastical rules speak out against sacrilege, because, as Saint Gregory said, “sacrilege was considered none the better than homicide, while the Holy Scripture wrote that the murderer and the one who stole objects dedicated to God shall be stoned to death” (Ἡ ἱεροσυλίᾳ παρὰ μὲν τῇ ἀρχαῖῃ καὶ θείᾳ Γραφῇ οὐδὲ ἐνομίσθη τῆς φονικῆς κατακρίσεως ἀνεκτότερα· ὅμοίως γάρ ὁ, τε φόνῳ ἀλούς, καὶ ὁ τὰ ἀνατεθέντα τῷ Θεῷ ὑφελόμενος, τὴν διὰ τῶν λιθῶν τιμωρίαν ὑπέσχον, Свештен'нотат'ство отъ дрѣвнаго оубо писаніа, нижимъ же възмѣнѣніе се оубиист'внаго осужденїа отрадн'вши, подобн'е во иже оубииствомъ овѣстѣть бывши, и възложен'наа Богови отиемъ, иже камен'емъ томление подемахоу).²⁹

The second part of Chapter I-1 contains three secular rules, all taken from the *Basilika* (lx, 45, 12):

- “A crime of sacrilege is the same thing as a crime of high treason” (Τὸ περὶ ἱεροσυλίας ἔγχλημα ὅμοιός ἐστι τῷ τῆς καθοσιώσεως, Εже свештен'нотат'ства съгрѣшениe подобно юсть неверъ царскон).
- “The law on sacrilege is enforced on those persons who have stolen something from holy property, to fill his own need, or he fraudulently acted as an aider” (Ο περὶ τῆς ἱεροσυλίας κινεῖται νόμος κατὰ τοῦ ὑφελομένου ἐκ τῶν ἱερῶν χρημάτων, ἡ χρησαμένου τούτοις εἰς ἴδιας χρείας, ἡ παρασκευάσαντος κατὰ δόλον γενέσθαι τι τούτων, Иже о свештен'нотат'ствѣ подвижетъ се законъ на

²⁶ The Slavonic word *sasudi* (*cacydu*) is a denomination for ecclesiastical and liturgical equipment used in church services, such as *putir* (*путур* = chalice, communion cup, poterion), *diskos* (*дискос* = paten, discus), *zvezdica* (*звездица* = asterisk, star-cover, holy star), *ripida* (*рипуда* = rhipidos, sacramental fan, flabelum), *kaščica* (*кашичца* = communion spoon), *koplje* (*копље* = lance, shaft, javelin, spear), *guba* (*губа* = sponge), *antimins* (*антиминс* = ante-mensa, antimensium, antimens, corporal, Vice-Altar), *kadionica* (*кадионица* = incense box, censer, flagrant box, incensory, thurible), *darohranilica* (*дарохранилица* = arthophorion, Holy Gifts tabernacle, monstrance, pix, pyx), *ciborium* (*цибориум* = ciborium), *panagerion* (*панагерион* = enkolpion, pectoral holy image), *petohlebnica* (*петохлебница* = artocasia, five-bread vessel, litiarium), *sasud za toplotu* (*сасуд за топлоту* = zeon). For the keeping of those objects and preparation of the Eucharist served the Table of Preparation (credence)—*proskomide* (*προσκομιδή*) in the Greek Orthodox Church, and *pastophorium*, *secretarium*, *sacrarium* in Roman-Catholic. See B. Radojković, “Sasudi”, in *LSSV*, pp. 649–650.

²⁷ Ed. Ralles and Potles, pp. 306–308; ed. Novaković, pp. 324–326.

²⁸ The First Council of Constantinople (381), which is considered as the Second Ecumenical.

²⁹ Ed. Ralles and Potles, p. 307; ed. Novaković, p. 325.

отием'шаго оть свештен'ныихъ иманїи, или сътвор'ша сїа на свою потр'бову, или оустроив'шаго локав'ствомъ быти что оть сихъ).

- “A thief of objects which are not devoted to God shall be guilty of larceny; if the private property was stolen from a sanctuary, it is not sacrilege, but larceny. A thief of those things that are devoted to God, even if it was stolen from a temporal place, is guilty of the crime of sacrilege” (‘Ο κλέπτων τὸ μήπω Θεῷ καθιερωθὲν, ὡς κλέπτης ἐνάγεται· τὸ γὰρ ὑφελέσθαι ἀπὸ τοῦ ἱεροῦ χρήματα ἴδιωτικὰ, οὐκ ἔστιν ἱεροσυλία, ἀλλὰ κλοπὴ· ὁ δὲ τὰ ἀνατεθειμένα τῷ Θεῷ κλέπτων, καὶ ἐξ ἴδιωτικοῦ τόπου κλέψη, ὡς ἱερόσυλος ἐνέχεται, Κραδີи еже не єште Богови освещен'ное ѧкоже татъ соудить се; иеже бо отиети оть светилишта иманїа простицьскаа, м'єсть свештен'ноірад'ство нь тат'ба; възложен'наа же Богови крад'и, аште и оть простицьскаа м'єста оукрадеть, ѧко свештен'ноірад'и цъ повин'нъ юстъ).

In the following lines Matheas Blastares explains that some holy objects, such as our personal icons, are not devoted to God because they are not exposed in churches and monasteries. So, if someone wrongfully takes and carries away such objects this crime could not be treated as sacrilege, while the place of the object's location denotes whether the crime is considered as a larceny or a sacrilege (τὸν τόπον ποιεῖν τὴν κλοπὴν ἢ τὴν ἱεροσυλίαν, μ'εστο юстъ творештсъ тат'бу или свештен'ноіат'ство). “If it were not like that, we would have to say that even the one who is stealing a golden coin with the image of Christ or Holy Virgin should be considered guilty of sacrilege, but this is unreasonable and a lie” (εἰ δὲ μὴ, εἴποιμεν ἀν καὶ τὸν νομίσματα κλέπτοντα, εἰκονα ἔχοντα τοῦ Χριστοῦ ἢ τῆς Θεοτόκου, ὡς ἱερόσυλον ἐνάγεσθαι· ὅπερ ἄποτον καὶ ψευδές, аште ли же ны, решти оубо имамъи и златники крадоуштаго образъ имоушти Христовъ или Богородичинъ, ѧко свештенноірадца соудима быти; еже оубо юстъ вез'м'єстно и лъж'но).

Matheas Blastares also notes: “The perpetrator of sacrilege who enters during the night into the holy altar and desecrates or plunders objects devoted to God should be punished by sword; the one who during the day, for the reason of poverty, steals in a church in a very small quantity should be flogged and banished” (‘Ο ἱερόσυλος ἐν νυκτὶ τῷ θυσιαστηρὶώ ἐπιβαίνων, καὶ τὰ ἀνατεθειμένα τῷ Θεῷ ἱερὰ μολύνων ἢ ἀφαιρούμενος, ξίφει τιμωρείσθω· ἐν ἡμέρᾳ δὲ μέτριόν τι ἀφαιρούμενος ἀπὸ τῆς Ἐκκλησίας διὰ πτωχείαν, τυπτόμενος ἔξοριζέσθω, Свештен'ноірад'и въ пошли жртьв'никъ въстонупаи и възложен'наа Богови свештен'наа сквръне или отиемле, мъчимъ да томимъ боудеть; въ днене же мало уто отемле оть цркве ништети ради, билемъ да ӡатакаетъ се).³⁰

³⁰ Ed. Ralles and Potles, pp. 307–308; ed. Novaković, pp. 325–326.

Two charters promulgated during the reign of King Stefan Uroš Milutin mention larceny from a church, but they do not use the term sacrilege (*свештенотатство, sveštenotatstvo*). The charter presented to the monastery of Saint Stephen in Banjska says: “And if someone stole something from a church, relics, wax or incense, let his house be scattered” (*И аще к'то оукраде ч'то въно утръ цркве до свѣщe, воска или тъмиана, да моу се коупца распe*).³¹ It is striking that the penalty for larceny of any church object is the same (confiscation of property), whether it be a holy object or a thing of low value. The same charter testifies that confiscation of property was punishment for sacrilege. King Milutin says that he donated several villages to some persons as hereditary estates. “They shall hold their property as long as they are faithful to the Church, King and his successors and under condition that they do not commit a crime of sacrilege” (*И села која дада кралевство ми ... докдѣ соу вѣрни цркви и кралевство ми, и по м'не господствуючи моу, и докдѣ се не вѣртъ отатие црковни, да соу имъ и ихъ дѣти по нихъ оу бащину в'сегда*).³² This clause shows that sacrilege was punishable in the same way as high treason. The Gračanitza charter equalizes larceny from a church and homicide: the penalty shall be what Lord the King says (*А чловѣкъ кои краде црквь и враждю оучини цю рече господинъ краль*).³³ So, sacrilege and *vražda* (homicide) are major crimes, both in the sphere of King's Court of Justice (*casus regales*).

Article 28 of the so-called “Justinian's Law”, entitled “Law on larceny” (*Жагарни Закон*), also speaks on sacrilege: “If someone has stolen something from a church, during the day or night, let him be blinded. If he has stolen something belonging to the church from the church yard, let him be beaten and singed and banished from that place” (*Аще к'то оукрадетъ что шт цркве, или въ почи или въ дьне да се исблѣпить. Аще ли на дворѣ цто црковно оукрадетъ, да се вѣ и исмоуди и проженет шт тоган м'еста*).³⁴

3 Robbery (*ἀρπαγή, latrocinium, гоуса*)

Robbery is defined as the wrongful taking and carrying away of the personal property of another from the other's person or personal custody and against the other's will by force and violence. The essence of the crime is the exertion of force against another to steal personal property from that person. A person

³¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

³² Ibid., p. 464.

³³ Ibid., p. 503.

³⁴ Ed. Marković, p. 60. Cf. *Ecloga* xvii, 15 and *Procheiron* xxxix, 58.

is guilty of robbery if, in the course of committing a theft, he a) inflicts serious bodily injury upon another; or b) threatens another with or purposely puts him in fear of immediate serious bodily injury.³⁵ Robbery usually carried out by members of lawless bands, often accompanied by class struggle and military operations, was called brigandage (*ληστεία*) and considered as a serious form of robbery.

Byzantine law does not explicitly mention robbery as a special crime. Only the *Procheiron* XXXIX, 19 speaks on “famous” (i.e. professional) brigands (Οἱ ἐπί-
σημοι λῃσταὶ, Ναρογιτέο ράζβοινици), but it does not contain a definition of robbery.³⁶ Matheas Blastares introduced in his *Syntagma* rules on robbery in two places: Chapter A-12, entitled “On brigands who steal another’s” (Περὶ τῶν ἀρπαζόντων λῃστρικῶς τὰ ἄλλότρια, О въхыштаюштихъ рязбоницъ туж-
дла),³⁷ and in the already quoted Chapter K-23 (“On larceny”), where at the end of the chapter there is a subtitle “Of brigands” (Περὶ λῃστῶν, О рязбони-
цехъ).³⁸

Chapter A-12 starts with, at considerable length, Rule 3 and the much shorter Rule 10 of Gregory Thaumaturgus. The essence of the rule is that brigands shall be removed and excommunicated from the Church of God, in the same way as sons are removed and deprived of their father’s fortune, because of their illegal acts (ἐκκήρυκτον καὶ ἀπόβλητον τῆς τοῦ Θεοῦ Ἑκκλησίας καθίστησιν, οἵα καὶ τοὺς δὲ αἰτίας ἀτόπους τῆς πατρικῆς οὐσίας ἐκβαλλομένους καὶ ἀποκηρυσσο-
μένους νίούς, отмѣтна и отврѣжена отъ Божіе цркви оустрагајетъ, іакоже ни
же винъ ради беззмѣстивихъ отъѹскаго Богат’ства изгонимыихъ и отмѣтае-
мыихъ съновъ).³⁹ The six laws that follow were taken from the *Basilika* and *Procheiron*:

- “The one who plunders after a fire or shipwreck or in a demolished house, the law condemns to indemnify fourfold price within one year [after the beginning of investigation], and when one year is past he has to pay single value” (Ο δὲ νόμος, τὸν ἀπὸ ἐμπρησμοῦ ἀρπάζοντα, ἡ ναυαγίου, ἡ καταπεσούσης οἰκίας, εἰσω μὲν ἐνιαυτῷ, εἰς τὸ τετραπλοῦν ἀποδοῦναι καταδικάζει, μετὰ δὲ τὸν ἐνιαυ-
τὸν, εἰς τὸ ἀπλοῦν, Законъ же иже отъ палежа въхыштающаго, или истопленїа,
или падшаго дома въноутрь оубо лѣта въ честворнноу отдати осоуждајетъ, по
лѣтѣ же въ истовину).

³⁵ Brown, *Legal Terminology*, p. 107; *Black’s Law Dictionary*, p. 1329.

³⁶ Ed. Zepos, vol. II, p. 218; ed. Dučić, p. 399; ed. Petrović, p. 322b. The law was accepted by Matheas Blastares’ *Syntagma*, Chapter K-23.

³⁷ Ed. Ralles and Potles, pp. 98–100; ed. Novaković, pp. 101–103.

³⁸ Ed. Ralles and Potles, p. 334; ed. Novaković, p. 353.

³⁹ Ed. Ralles and Potles, p. 98; ed. Novaković, pp. 101–102.

- “The same is valid for a person who receives [plundered objects] with fraudulent intent” (ώσαύτως καὶ τὸν κατὰ δόλον ταῦτα ὑποδεχόμενον, τάκοждε и иже по лъсти сїа подиємлѧюштаго).⁴⁰
- “The law does not forgive robbers, even if they before a sentence return the plundered property; they shall be condemned to pay fourfold value” (Τὸν δὲ ἀρπαγας, καὶ πρὸ καταδίκης προσάγοντας τὸ ὑπ’ αὐτῶν ἀρπαγὴν, οὐ προσι-εται, ἀλλ’ εἰς τὸ τετραπλάσιον καταδικάζει, Хышиш'ники и прѣжде осоужденіа приносештихъ отъ тѣхъ въсхиштен'ноне не приемлѧеть, ны въ четвороноу осоуждаетъ).⁴¹
- “If someone captures by force any movable thing (κινητὰ πράγματα, движимые вешти), he has to pay fourfold value. If there were no witnesses, the looted person shall make a sworn statement and a robber has to compensate him a single value of the captured thing, according to a sworn statement.”⁴²
- “If someone without a sentence seize by force any movable thing, even if he be its owner, he shall lose his ownership right over it; if a thing belongs to somebody else, he shall pay its value. If the investigation was initiated within one year, a fine shall be added, and after a year only a thing and fruits”⁴³ (Ἐάν τις χωρὶς δικαστικῆς ἀποφάσεως ἀφέληται τι πράγμα, εἰ μὲν δεσπότης ἐστὶ τοῦ πράγματος, ἐκπίπτει τῆς δεσποτείας αὐτοῦ· εἰ δὲ ἀλλότριόν ἐστι τὸ πράγμα, καὶ τὴν τιμὴν αὐτοῦ δίδωσι. Κἀνταῦθα τοίνυν, ἔσωθεν τοῦ ἐνιαυτοῦ κινουμένης τῆς ἀγωγῆς, δίδοται ἡ ποινὴ, μετὰ δὲ τὸν ἐνεαυτὸν, τὸ πράγμα μόνον καὶ οἱ καρποί, Аште ксто icerомъ соуднаго отреуеніа отиметь кою вешть, аште оубо владика юстъ вешти, отпадајетъ владыкъства тое; аште ли же тоуѓда юстъ вешть, и цѣноу же дајетъ. И здѣ оубо, въноутрь лѣта подвижаюштен се при, дајетъ се гловда, по лѣтѣ же вешть тык'мо и плодове).⁴⁴
- “The one who captures by force a land or rearranges the boundary stones, he shall pay double the value of the seized things” (Ο ἀρπάζων γῆν, ἢ μετα-τιθεὶς ὅρια, διπλὴν τὴν ἀρπαγὴν ἀποδίδωσιν, Въсхищаен землю или прѣлагате прѣдѣли соугоубо юже въсхиити въздавајетъ).⁴⁵
- “Those who attack with weapons and destroy somebody else's homes or lands shall be punished by the death penalty” (Οἱ μεθ' ὅπλων ἐπιόντες, καὶ

⁴⁰ *Basilika*, LX, 20, 1.

⁴¹ *Basilika*, LX, 17, 314.

⁴² The law does not prescribe the amount of the fine. The final wording is not clear. I suppose that the intention is that a robber must pay the value of the captured thing plus the fruits and profits of the property.

⁴³ *Basilika*, LX, 3, 55.

⁴⁴ *Procheiron*, XXXIX, 48.

πορθούντες ἀλλοτρίους οἴκους ἢ ἄγρους, εἰς κεφαλὴν τιμωροῦνται, Ιήσε σὸν ὑγιέστης παπάδαιοις καὶ ραζαρατοῖς τούχδει δόμηι ήτοι καὶ σελα, βὲ γλαβοὺς τομηῖς σούτη).⁴⁵

Although final lines of Chapter K-23 contain a subtitle “Of brigands”, only the first law, taken from the *Procheiron*, treats the crime of robbery: “Let the famous brigands be crucified⁴⁶ at the places where they have committed a crime, in order to frighten all those who could do something similar, and to give comfort to the relatives of killed persons” (Οἱ ἐπίσημοι λησταὶ ἐν τοῖς τόποις, ἐν οὓς ἐπλημμέλησαν, ἀνασταυροῦνται, ἵνα διὰ τῆς θέας πτοηθῶσιν οἱ τοῖς τοιούτοις ἐγχειροῦντες, καὶ ἵνα γένηται παρακυθία τοῖς συγγενέσι τῶν ἀναιρεθέντων, Ναρούχιτι ραζβονιηῖς να μέστεχος ιδείκε σύγρεψις δα ρασπινηαύτος σε, δα στηνετηνεαύτος σε ιήσε σιτεβαία ναριναίουστεν и да боудетъ оутбашене съродникоомъ оубиен'ныхъ).⁴⁷

The second law refers to cutting of trees, and it orders: “Those who are cutting trees or wine grape shall be punished as robbers” (Οἱ δένδρα καὶ μάλιστα ἀμπέλους τέμνοντες, ὡς λησταὶ κολάζονται, Ιήσε δρεβεσα и пауе лози съкоуштен таюже разбоници мончимии соутъ). Does this mean that persons who cut trees and wine grapes would be crucified? This is hard to believe, because the second part of this provision says: “if more than one cut the same tree, everyone is guilty as he had cut alone the whole tree; if he denies, he has to pay double value, if he confesses, single value” (καὶν πολλοὶ τὸ αὐτὸ τέμωσι δέδρον, ἔκαστος αὐτῶν εἰς ὀλόκληρον ἐνέχεται, ἢτοι ἐξ ἀρνήσεως μὲν, τὸ διπλοῦν τοῦ τιμήματος· ἐξ ὅμολογίας δὲ, τὸ ὀπλοῦν, αἴτιε и мнози тожде съкоушть дръбо, къждо ихъ въ цъвло повин'ни юестъ, рек'ше отвръженемъ оубо соугоубо цъвноу; исповѣданемъ же единоубо).⁴⁸

“If someone intentionally receives a stolen thing, he shall be an accessory after the fact and shall be punished in the same way as the perpetrator” (Ο ἐν εἰδήσει ὑποδεχόμενος τὸ κλαπὲν πρᾶγμα, καὶ ὁ συνειδὼς τῷ ἀμαρτάνοντι, ἐν ἵσῳ αὐτῷ τιμωροῦνται, Ιήσε въ вѣдѣнїи подемлие оукраден'ноуто вешть, и съв'ест'никсъ боудетъ съгрѣшаюштомуу, въ рав'но томоу тонить се). It is clear that this provision refers to larceny, although Matheas Blastares placed it in the part of the chapter speaking on robbery.

45 *Basilika*, LX, 18, 3. *Syntagma*, ed. Ralles and Potles, p. 100; ed. Novaković, p. 103.

46 According to the *Ecloga* (xvii, 50) and *Basilika* (LX, 51), as a deterrent, brigands were to be brought to death by the *furca* (φοῦρκα, lit “fork”, an instrument of execution related to the gibbet) at the place where they were seized.

47 *Procheiron*, XXXIX, 16.

48 *Basilika*, LX, 16, 2 and 6.

Finally, Matheas Blastares tried to define a difference between larceny and robbery, saying: "A thief is the one who secretly but without weapons commits a crime and he shall not be punished neither by cutting of limb nor by death" (Κλέπτης ἐστίν ὁ λάθρα καὶ χωρὶς ὅπλων ἀμαρτάνων, ὃς οὔτε μέλους ἐκκοπὴν, οὔτε θάνατον ὑπομένει, Ταῦτα ιεστὶν ικε ται ι κρομβ ὁρογχίδα συγρεψαε, ικε ηι ιε ουδα οτεβγενε, ηι ιε συμρετη πρετρηγεβαετ). "The one who commits a crime using force, with or without weapons, at any place it be, shall be punished according to the law" (ό δὲ βίᾳ πληγμελῶν μεθ' ὅπλων, ἡ χωρὶς ὅπλων, ἐν οἰώδηποτε τόπῳ, τὰς ἀπὸ τῶν νόμων ποινὰς ὑφίσταται, ηογχδειο ιε συγρεψαει ιε ορογχέμε, ιιιι κρομβ ὁρογχίδα ιιιι κοεμ ιιιιο μεστη, ιικε οτε ζακона καζни подиемлеть).⁴⁹ The exposed difference is correct in every detail, although neither the Greek text nor the Serbian translation explicitly mention brigands.⁵⁰

Matheas Blastares' *Syntagma* contains one more provision on robbery, but placed in Chapter II-21, dedicated to traitors: "He who has plundered on land and on sea together with brigands shall be punished more severely than public enemies, because secret attack is worse than open war" (οἱ δὲ κατὰ χέρσον, ἡ θάλλασσαν τοῖς ληστεύουσι συλληστεύσαντες, τῶν φανερῶν πολεμίων μᾶλλον κολάζονται, ὅσῳ καὶ τοῦ φανεροῦ πολέμου ἡ ἀφανῆς ἐπιβουλὴ χαλεπωτέρα καθέστηκε, **а иже ли по соуходу или по морю съ гоусоющими гоусовав'ше, гавлиеныхъ ратникъ множае моучеть се, елико и гавлиенииye рати. не гавленыи насть лют'вишши яестъ.**)⁵¹

The first part of Dušan's Law Code does not have a single provision on robbery, probably because Matheas Blastares' *Syntagma* defines this crime in great detail. However, the second part of the Code contains several articles referring to robbery and the Tsar's intention to stop it. For robber (brigand) Dušan's Law Code uses the word *gusar* (гусаръ) and for robbery *gusa* (гуса). *Gusar* (зјукар) is in use in modern Serbian but only for pirate, freebooter, sea-rover, while the modern term is *razbojnik* (разбојник) or *bandit* (бандит). *Gusa* (зјуца) is obsolete, and the modern word is *razbojništvo* (разбојништво).

49 It is interesting to compare Matheas Blastares' text with a definition of Saint Thomas Aquinas (Italian Tommaso d'Aquino, 1225–1274): *Furtum enim et rapina differunt secundum occultum et manifestum; furtum enim importat occultum acceptionem; rapina vero violentam et manifestam* ("For the difference between theft and robbery with violence is between that which is secret and that which is flagrant, for theft connotes secret taking, whereas robbery connotes flagrant violence"). *Summa Theologiae* 66, 4, edited with English translation by Marcus Lefébure (Cambridge 2006), vol. 38, pp. 72–73.

⁵⁰ Ed. Ralles and Potles, p. 334; ed. Novaković, p. 353.

⁵¹ Ed. Ralles and Potles, p. 442; ed. Novaković, p. 468.

The first article in sequence treating robbery has already been mentioned: article 143,⁵² which provides responsibility for a Warden of the Marches (*vlastela krajiničici*) for raids of brigands. The most important are articles 145, 146 and 147. These three clauses go together and illustrate the extent of brigandage in the country at the time, as well as Dušan's resolution to stamp it out:

Article 145, entitled "Of brigands and thieves" (О гоусарѣ и татах):

My Majesty commands. In all lands and in the towns and counties and in the marches there shall be no brigands nor thieves in any region. And in this manner shall thieving and brigandage be stopped. In whatsoever village a thief or brigand be found, that village shall be scattered and the brigand shall be hanged forthwith, and a thief shall be blinded and the headman⁵³ of the village shall be brought before me and shall pay for all that the brigand or thief has done from the beginning and also shall be punished as a thief and a brigand.

Повелѣвъ царство ми, по всѣх землѧх и по градовѣх, и по жоупах, и по краищехъ гоусара и тата да нѣсть ни оу чѣмъ прѣдѣлѣ; и сим'зи ивразомъ да се оукрати тат'ба и гоусар'ство; оу коемъ се селе наше татъ или гоусар, този село да се распе, а гоусарь да се ивѣси стрымоглавъ, а татъ да се ислѣпи, а господарь села тога да се довѣде свезданъ къ царству ми и да плаќи вѣсе цио је чинилъ гоусарь и татъ ут испрѣва, и пакы да се каже, како татъ и гоусарь.⁵⁴

Article 146,⁵⁵ entitled "Of bailiffs" (О владаљцих)⁵⁶:

⁵² See Chapter 9, section 4.5.

⁵³ The word *gospodar*, translated as "headman", literally "lord", must not be taken in this context to mean more than a prominent yeoman in the village, having his own holding, and acting in the capacity of representing the village (Burr, "The Code of Stephan Dušan", p. 526, comment on article 145).

⁵⁴ Burr, "The Code of Stephan Dušan", p. 526; Novaković, *Zakonik*, p. 112; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

⁵⁵ In article 146 Dušan includes various administrative officials in the net, threatening them with the actual penalties of the criminals if they were caught harbouring them.

⁵⁶ The word *vladalci*, translated "bailiffs", was a general name for all court dignitaries (see Chapter 9, section 2.2), but in article 146 it denotes an administrator of the village, appointed by his lord. In English law, a bailiff is a court officer or attendant who has charge of a court session in the matter of keeping order, custody of the jury, and custody of prisoners while in the court. One to whom some authority, care, guardianship, or jurisdiction is delivered, committed, or entrusted. One who is deputed or appointed to take charge of

And also prefects⁵⁷ and lieutenants⁵⁸ and bailiffs and reeves⁵⁹ and headmen⁶⁰ who administer villages and mountain hamlets. All these shall be punished in the manner written above, if any thief or brigand be found in them.

Такожде кнезовѣ и прѣмикюре, и владал'ци, и прѣдстаници, и чел'ници кои се обрѣтаю сели и катѹни, вбладающе, тѣзїи въси да се кажѹ обра- зомъ выше писанымъ, аще се наидѣ оу нихъ тать или гоусарь).⁶¹

Article 147, entitled “Of bailiffs” (О владал'цихъ):

If any bailiff make a report to his master and that lord be inattentive thereto, he shall be punished as a brigand or a thief.

Ако ли сѹ владал'ци што вѣдали господаре; а господари се поневѣдили, да се тази господа кажѹ како гоусарь и татъ.⁶²

To this group of articles we can also add article 173, entitled “Of lords” (О властѣахъ), which orders: “Lords, greater and lesser, who come to my Imperial Court, whether Greek, German or Serb, whether great lord or anyone else, and

another's affairs; an overseer or superintendent; a keeper, protector, or gurdian; a steward (*Black's Law Dictionary*, p. 141).

57 The word *knezovi*, translated “prefects”, in article 146 designates superiors of villages or Vlachs’ hamlets. Vlachs’ prefects are mentioned by the Žiča chrysobull (А се Власи... Г҃рдѣ կнезъ) and two of King Milutin’s chrysobulls to the monastery of Hilandar from the years 1282 and 1303–1304 (А се Власи: кнезъ Воихна). Mošin, Ćirković, and Sindik, *Zbornik*, pp. 91, 279 and 370. Besides that *Knez* was the title of Serbian monarchs from 1371 till 1402 (see Chapter 9, section 1).

58 The word *primicuri* or *primikiri* (from Greek πριμικήριος), translated “lieutenants”, is also one of the names for superiors of villages or Vlachs’ hamlets. For example, the Saint Archangel’s chrysobull mentions *premićur Voihna* (прѣмикюре Воихна) and *Grade premićur* (Граде прѣмикюре). Ed. Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, pp. 102 and 106.

59 The word *predstainici*, translated “reeves”, is also a name for superiors of villages and hamlets, mentioned only in article 146. A reeve is an ancient English officer of justice inferior in rank to an alderman. He was a ministerial officer appointed to execute process, keep the King’s peace, and put laws into action (*Black's Law Dictionary*, p. 1280).

60 On *čelnici* (“headmen”), see Chapter 9, section 2.3.

61 Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 113; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

62 Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 114; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

bring with them a brigand or a thief, shall be themselves punished as a thief or a brigand" (Властѣлѣ и властѣличысы кои гредѣ оу дворѣ царства ми, или грыкъ, или нѣмьцъ, или срѣбнинъ, или властѣблиниъ, или ини кто любо, тѣре довѣде собомъ гоусара или тата, да се ѿнъ гостодаръ каже како татъ и гоусарь).⁶³ "As the lords who visited the Imperial Court were usually accompanied by a numerous retinue, probably including foreign and other mercenaries and armed retainers, it was a necessary precaution to hold them responsible for the misdeeds of their party."⁶⁴

All these quoted articles illustrate the extent of brigandage in Serbia at the time, as well as Dušan's intent to stop it with severe penalties and threats to his administrative officials who could help and harbour brigands. However, robbery was a common occurrence even a few centuries before Stefan Dušan's reign.⁶⁵ Already King Stefan the First Crowned, in the biography of his father Stefan Nemanja (Saint Simon), presented a story of a poor, lame man, "bruised by the evil brigands" (и ѿгненаго раз'боинисы злыми), who was cured thanks to the holy relics of Saint Simon.⁶⁶

The problem arised from the fact that robbery was not only the occupation of low social classes, but of noblemen as well. Theodore Metochites, for example, in his Ambassador's Report wrote:

Some between his [King Milutin's] fellow-countrymen are barbarians, brutes and ignorant persons, and some of them are shameless men, ill-tempered and scamps, accustomed to delight in fight; they are robbers of bovines and goats, they are neither householders nor men of reputation, but they lurk and plunder in the borders and in the waste mountains herds, men and travellers, disregarding nature, law, truth and any justice and this is common.

Οἱ μὲν τῶν ἐγχωρίων αὐτῶν βάρβαροι καὶ σκαιοὶ καὶ ὀλιγογνώμονος· εἰσὶ δὲ οἵ καὶ βδελυροὶ τε καὶ κακοήθεις καὶ κακογνώμονες, ταῖς μάχαις εἰθισμένοι χαίρειν, ταύρων ἡδὲ αὐγῶν ἀρπακτῆρες, οὐδὲ εἰς προῦπτον οὐδὲ ἐπίδημοι τινες οὐδὲ

⁶³ Burr, "The Code of Stephan Dušan", p. 533; Novaković, *Zakonik*, p. 135; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

⁶⁴ Burr, "The Code of Stephan Dušan", p. 533, comment on article 173.

⁶⁵ On brigandage in Serbia see M.A. Purković, "Krađe i razbojništva u srednjovekovnim srpskim zemljama" ["Larcenies and Robberies in Mediaeval Serbian Lands"], *Glasnik jugoslovenskog profesorskog društva* 13 (1933), pp. 406–414, and K. Jireček, *Istorija Srba*, vol. II, pp. 285–288.

⁶⁶ Ed. Jovanović, p. 78. It is interesting that the hagiographer uses for brigand the modern word *razbojnik*, not *gusar*, which is common in Dušan's Law Code.

ἐπίδηλοι, ἀλλ' ἐν τοῖς δροις τε καὶ ἐν ὄρεσιν ἐπ' ἔρημίας ἀνδρῶν τε ὁδιτῶν καὶ βοσκημάτων ἐλλοχηταί τε καὶ λωποδύται καὶ ἀνδραποδισταί, κατηλογηκότες τῆς φύσεως καὶ δόγματος ἀληθείας καὶ δίκης ἀπάσης, ἡς νομίζεται.⁶⁷

The most famous brigand in the Balkans was Momchil (Bulgarian Момчил, Serbian Momčilo/Момчило, Greek Μομιτζίλος or Μομιτζίλας, born c.1305, died 7 July 1345), a 14th-century Bulgarian robber and local ruler. Initially a member of a bandit gang in the borderlands of Bulgaria, Serbia and Byzantium, Momchil was recruited by the Byzantines as a mercenary. Through his opportunistic involvement in the Byzantine civil war of 1341–1347, where he played the various sides against each other, he became ruler in a large area in the Rhodopes and Western Thrace.⁶⁸ Due to his opposition to the Turks, Momchil is remembered in popular South Slavic legends as a fighter against the Turkish invasion of the Balkans.⁶⁹

67 Metochites, 325–332, ed. Mavromatis, *Fondation*, p. 98.

68 Momchil achieved initial successes against Turks and Byzantine alike, setting Turkish ships on fire and almost managing to kill one of his main opponents at the time, John VI Cantacouzenos. In late spring 1345, however, Cantacouzenos reinforced with allegedly 20,000 troops from Aydin under their ruler Umur Bey and marched against Momchil. The two armies met near Peritheorion (Περιθεώριον, today a small village Amaxades, Greek Αμαξάδες, Bulgarian Арабажди, Turkish Arabacıköy, with a population of 1,773, in the Rhodope regional unit, East Macedonia and Thrace, Greece; south of the village are the remains of the ancient town Anastasiopol, Greek Αναστασιούπολις, later known as Peritheor, Bulgarian Бурград) on 7 July 1345, and Momchil was defeated and killed. Information on Momchil is given by Byzantine writers Nikephoros Gregoras and John Cantacouzenos in their historical works, as well as in the Turkish epic chronicle *Düstürname*, written by poet and historian Enveri, during the reign of Sultan Mehmet II (1451–1481). Fragments of Gregoras and Cantacouzenos concerning Momchil were translated into Serbian with extensive comment by S. Ćirković and B. Ferjančić, in *VIIN*, vol. vi, pp. 253–262, 452–458, 461–467, 472–477, 480. See also *Le Destan d'Umur Pacha (Düstürname-i Enveri)*, *texte, traduction et notes*, ed. I. Mélikoff-Sayar (Paris 1953).

69 There is a long history of treating robbers as heroes. Originally they were admired by many as bold men who confronted their victims face-to-face, ready to fight for what they wanted. The mediaeval outlaw Robin Hood is regarded as an English folk hero. Later robber heroes included the cavalier highwayman James Hind, the French-born gentleman Claude Du Vall, John Nevison, Dick Turpin, Sixteen String Jack, William Plunket and his partner the “Gentleman Highwayman” James MacLaine, the Slovak Juraj Jánošík, and Indians including Kayan Kulam, Kochunni, Veerapan and Plan Devi. In the same way, the Puerto Rican pirate Roberto Cofresí also came to be venerated as a hero.

In the European lands of the Ottoman Empire, the term *hajduk* (хайдук, χαΐντούκ) was used to describe bandits and brigands of the Balkans, while in Central Europe for the Slavs, it was used to refer to outlaws who protected Christians against provocative actions by the Ottomans. In Balkan folkloric tradition, the *hajduk* (*hajduci*, χαΐντούκοι, in plural) or *klepht* (χλέφτες, χλέφτις in plural) in Greece, is a romanticized hero figure who steals from, and

In mediaeval Germany there existed the term *Raubritter*, meaning robber baron or robber knight. A *Raubritter* was an unscrupulous feudal landowner who, protected by his fief's legal status, imposed high taxes and tolls out of keeping with the norm without authorisation by some higher authority. Some resorted to actual banditry.

Mediaeval robber barons most often imposed high or unauthorised tolls on rivers or roads passing through their territory. Some robbed merchants, land travellers, and river traffic, seizing money, cargo, or entire ships, or engaged in kidnapping for ransom.

It seems that the crime of robbery could be committed by the King himself. Such a conclusion could be made from Queen Helen's oath to the Archbishop, Doge and the whole Republic of Dubrovnik (1267–1268). The Queen swore to the friendship and promised to inform the City, as soon as possible, if her husband King Uroš raised an army against Dubrovnik, or had intent to rob it (И ако име ћтврти краль послати воиску на Дубровник, или гдје, или цю годб пакостити Дубровник, да є вд мене вједбнине џ градб в колико наливе могу бръзо).⁷⁰

We already mentioned *gradoblijudenije*, the villager's service of providing the guard in towns and on the roads and coasts in order to protect merchants and travellers from brigands and thieves. For example, King Stefan Dragutin in the chrysobull presented to the monastery of Hilandar (1276–1281) orders that villagers from Prizren's manor have to provide a guard to protect the Holy Mountain's sea ports and coasts from pirates (И призрење се метохуше, како соу стражли стражю вд Грысъ, да не стражегу, нь за тоу стражю да даю оу Светоу Гороу чловѣка да стражетъ страже на моры на пристаништи, нь что имъ оу з'мѹ гоусомъ вд Грысъ).⁷¹ The guarding of roads was prescribed by articles 157, 158 and 160 of Dušan's Law Code, quoted above.

The above-quoted chrysobull of King Dragutin to Hilandar mentions the term *podvod* (аке не боуде подъвода на ни).⁷² According to Taranovski a *podvod*

leads his fighters into a battle against, the Ottoman authorities. They are somewhat comparable to the English legend of Robin Hood and his merry men, who stole from the rich (which is in the case of *hajduci* to be also foreign occupants) and gave to the poor, while defying seemingly unjust laws and authority. The *hajduci* of the 17th, 18th, and 19th centuries were commonly regarded as both guerilla fighters against Ottoman rule and as bandits and highwaymen who preyed not only on Ottomans and their local representatives, but also on local merchants and travellers. As such, the term could also refer to any robber and carry a negative connotation.

⁷⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 238.

⁷¹ Ibid., p. 268.

⁷² Ibid., p. 268.

is a special type of accomplice related to robbery—aiding criminals by informing brigands on persons who should be robbed.⁷³

4 Rapine (*rapina*)

Rapine is defined as the forcible and violent taking of another man's movable property with the criminal intent to appropriate it to the robber's own use. As opposed to robbery, the essence of the crime does not imply the inflicting of serious bodily injury upon another or putting someone in fear of immediate serious bodily injury. Serbian mediaeval law has no strict definition of rapine, but according to King Vladislav's treaty with Dubrovnik (September 1234–April 1235), the difference between the two crimes is evident. Ragusan Doge Johannes Dandulus (ЖАНОН ДАНДОЛ) swore to the Serbian King “that he shall not inflict any damage to the King's country and city, neither by rapine, nor by robbery, neither openly, nor secretly” (*И земљи твоји и градомъ твоимъ да не пакостимо ни пљеномъ ни гусовъ, ни шутивѣсть ни таємъ*).⁷⁴ As the source mentions rapine and robbery (*ni plenom ni gusom*) as two separate crimes,⁷⁵ it is clear that the difference existed, and that Serbian lawyers at least knew of it. For rapine our document uses the word *plen* (пљенъ), meaning prey, booty, spoils, plunder, loot. The substantive *plen* comes from the verb *pleniti*, which has also several different meanings (to rob, plunder, pillage, sack, loot, ravage, maraud), but it always refers to the violent and unlawful taking of another man's property (articles 57, 142 and 143 of the Code).

Another term for rapine is *grabljenije* (грабљење),⁷⁶ present in article 144 of the Code.⁷⁷ However, to denote rapine Serbian legal sources sometimes use the descriptive formula “taken by force” (силомъ оузето). For example, King Dragutin's chrysobull to the monastery of Hilandar (1276–1281), among other things, says: “If someone be found on the market-place taking something big or small by force, he has to return tenfold” (*И на сёмъ тръговъ кто се шефтите оуземъ по силѣ уесо мало и велико, да врати самодесето*).⁷⁸ Article 180 of Dušan's Law Code starts with the wording: “If anyone find anything robbed or stolen

⁷³ Taranovski, *Istorija*, vol. II, p. 98.

⁷⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 135. The Latin text of the document is a little bit different: *Et terre vestre et civitatibus vestris non offendemus, nec manifeste nec occulte.* Ibid.

⁷⁵ But only in the Serbian version of the document.

⁷⁶ *Grabež* (грабеж) in modern Serbian.

⁷⁷ See Chapter 21, section 3.

⁷⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 269.

or taken by force" (Лиже ктo ꙗо оухвати гоушено, или крадено лицемъ, или силомъ оузею).⁷⁹ By opposing "taken by force" (i.e. rapine) with "stolen" (larceny) and "robbed" (robbery), the editors of the Code demonstrated that they were well aware of the tripartite division of essential crimes against property that was common in mediaeval law—*furtum*, *latrocinium*, and *rapina*. It is logical to think that the penalty for rapine was more strict than for larceny, but it is impossible to say anything more precise. In some cases the sources mention rapine, but without quoting a penalty. In articles 57 and 144, a penalty was presented, but it is not clear whether such a punishment was prescribed because of rapine or because of malfeasance of maintenance right (article 57) or villager's reprisal (article 144).

5 Arson (έμπρησμός, палежь, запаленіє)

Arson is the wilful and malicious burning of a dwelling house or any other property. A person is guilty of arson if he starts a fire with a purpose of destroying a building or damaging any property, whether his own or another's.

In Old Slavonic law malicious arson was considered as a felony of the first degree. So-called *Russkaya Pravda* ("Russian Justice, Vast Version") set apart from a list of fines three crimes, robbery (разбои), horse-theft (коневыи татъ) and arson (аже зажъжетъ), that were punishable by complete scattering (погонъ и разграбленіе).⁸⁰ Article 7 of the Pskov Judicial Charter (Псковская судная грамота), issued in various redactions between 1397 and 1467, prescribes that arson, high treason, sacrilege and horse-theft are four crimes punishable by death (А кримскому татю и коневому и переветнику и зажигалнику тем живота не дати).⁸¹

Byzantine law threatens capital punishment for malicious arson, as is evident from Chapter xvii, 41 of the *Ecloga*: "Whosoever by reason of hostility or rapine starts a fire in the city, let him be burnt. If he knowingly out of the town set on fire a village or field or house in the country, let him be punished by sword" (Οι διά τινας ἔχθρας ἡ ἀρπαγάς πραγμάτων ἐμπρησμὸν ἐν πόλει ποιοῦντες πυρὶ παραδιδόσθωσαν· εἰ δὲ ἔξω πόλεως χωρίᾳ ἡ ἀγροὺς ἡ οἰκίας ἀγρῶν ἔξεπίτηδες ἐμπρήσωσι, ξίγει τιμωρείσθωσαν).⁸² There is a similar provision in the *Procheiron*

79 Burr, "The Code of Stephan Dušan", p. 534; Novaković, *Zakonik*, p. 139; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

80 Articles 7, 35 and 83. Ed. Zimin, *Sources of Russian Law*, vol. I, pp. 109, 111, 117.

81 Ed. Zimin, *Sources of Russian Law*, vol. II, p. 278.

82 Ed. Burgman, p. 240.

xxxix, 75–76.⁸³ Matheas Blastares created a separate Chapter E-7, entitled “On arson” (Περὶ ἐμπρησμοῦ, Ο παλέξι, in Prizren transcript Ο запалені), consisting only of secular laws.⁸⁴ Provisions were taken from the *Ecloga* XVII, 41, *Procheiron* xxxix, 18, 75, 76 and *Basilika* LX, 20, 2:

- If someone sets a house or wheat-stack on fire intentionally (ἐν εἰδήσει, въ вѣдѣни), he shall be first whipped and than burnt. If the arson happened from recklessness (χατὰ ραθυμίαν, по неизрѣженіи), he shall be condemned for indifference and negligence. The penalty was not strictly provided. If the arson happened accidentally (χατὰ τύχην, по прилѹчаю), he shall be pardoned.
- “If someone, when a fire broke out, demolishes his neighbour’s house to save his own, [lex] Aquilia⁸⁵ shall not be enforced, that is no compensation of damage, unless that fire was next to his house, or it was already extinguished” (Εἴ τις ἐμπρησμοῦ γενομένου, διὰ τὸ σῶσαι τὸν ἔδιον οἶκον, χαταστρέψει τὸν τοῦ γείτονος, ἀργεῖ ὁ Ἀκούιλιος, ἢτοι ἡ ζημία, εἴτε τὸ πῦρ ἔφθασεν, εἴτε προεσβέσθῃ, Аште исто запаленію быв’шоу за юже съхранити свои домъ, разорить соусед’нii, пражданоуєть Акоуїлїе, рек’шe тьштета любо огнь достиже любо прѣдоугашень бысть).⁸⁶

The Serbian legal sources use different terms for arson: *palež*, палежъ (*Syntagma*); *požeg*, пожегъ (article 58);⁸⁷ and *zapaljenie*, запаленіе (*Syntagma* in Prizren transcript and article 99, manuscripts of Athos and Bistrizza). All these

83 Ed. Zepos, vol. II, p. 226.

84 Ed. Ralles and Potles, pp. 250–251; ed. Novaković, p. 262.

85 *Lex Aquilia* (The Aquilian Law) was a celebrated law passed on the proposition of the Tribune of the Plebs, Caius Aquilius Gallus, 287 BC, during the course of the struggle between the plebeians and the patricians, superseding the earlier portions of the Twelve Tables, and regulating the compensation to be made for that kind of damage called *dannum iniuria datum* (wrongful damage to property), in the cases of killing or wounding of a slave or beast or another. According to Chapter III of the Law, a person who damaged property, other than by killing a slave or a four-footed animal (as in Chapter I), by breaking, burning or destroying, was liable to the owner in damages based on the highest value the damaged property possessed during the preceding 30 days. Liability under the *Lex Aquilia* was incurred when there was an intentional or negligent act which was wrongful, and which resulted in damage being suffered by the owner of the property which had been injured. According to Ulpian (D. ix, 2, 44), *In lege Aquilia et levissima culpa venit* (“Under the Aquilian Law even the slightest degree of faults counts”).

86 Ed. Ralles and Potles, p. 251; ed. Novaković, p. 262. Cf. Chapter 18, section 6.

87 In modern Serbian there exists the word *požar* (пожар), meaning “fire” or more frequently “conflagration”, a large and destructive fire. The English word fire is usually translated as *vatra* (вата). The term *požar* is related to *Požarevac* (Пожаревац), lit. “Fire-town”, a city and the administrative centre of the Braničevo District in eastern Serbia, with a population of 44,183 inhabitants.

words are now obsolete, but some have survived in toponyms.⁸⁸ The modern word is *paljevina* (*паљевина*).

Charters do not mention arson, but Dušan's Law Code contains two articles referring to it:

- Article 99, entitled "On those who burn houses" (Ѡ ωποαλιαюци қоұқы):⁸⁹ "If anyone be found who has burnt a house, or a threshing floor, or straw or hay, let the village give up the burner: and if it do not give him up, then let that village pay what the burner would have suffered and paid" (Кто ли се наайде оужегъ қоұқы, или гоұмно, или сламъ, или сено, да този село дада пожеж'цъ; ако ли га не дастъ, да платті үнози село цю би пожеж'ца патильт и платил').⁹⁰
- Article 100, entitled "On those who burn a threshing-floor" (Ѡ гоұмна оужи-затоқы): "And if anyone outside a village burn a threshing-floor or hay, let the neighbourhood pay or hand over the burner" (Ако ли кто оужеже из'виль села гұмно или сено, да платти үколяина волю да да пожеж'цъ).⁹¹

These two clauses go together, and they insist once more on the principle of collective liability, the village in the first instance, the neighbourhood in the second.⁹²

Nothing is said about punishment in the older manuscripts, but those of the Athos and Bistrizza group specify that a perpetrator of arson done "by rancour" (по пизмѣ) shall be burned alive if found, and if he cannot be found, the village would pay what he would have suffered and paid.⁹³ This provision is in close connection with Matheas Blastares' *Syntagma*.⁹⁴

⁸⁸ During Turkish rule, the city of Obrenovac (today a municipality of the city of Belgrade) was called *Palež*, possibly as a reference to the frequent looting and fires it was subjected to. Today, *Palež* is a name of villages in the municipalities of Višegrad, Srebrenica and Kiseljak (Bosnia and Herzegovina) and Žabljak (Montenegro). *Požeg* has survived in the names of two towns called *Požega* (Пожега)—one in Serbia and another in Croatia. During the Socialist Federative Republic of Yugoslavia, Serbian *Požega* was called *Užička Požega*, to be distinguished from *Slavonska Požega*, now in Croatia. Serbian *Požega* is a town and municipality in Zlatibor District of western Serbia (population 13,153). Croatian *Požega* is situated in western Slavonia, eastern Croatia (population 26,248).

⁸⁹ Burr, "The Code of Stephan Dušan", p. 217, translated the titles of articles 99 and 100 as "Of Arson", which is not precise.

⁹⁰ Burr, "The Code of Stephan Dušan", p. 217; Novaković, *Zakonik*, p. 76; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

⁹¹ Burr, "The Code of Stephan Dušan", p. 217; Novaković, *Zakonik*, p. 77; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

⁹² See Chapter 17, section 1.

⁹³ Novaković, *Zakonik*, pp. 76–77; *Zakonik cara Stefana Dušana*, vol. I, p. 186 (article 98), vol. II, p. 194 (article 97).

⁹⁴ See B. Marković, "Krivično delo paljevine u zakonodavstvu cara Stefana Dušana prema

Severe penalties for arson were prescribed by the statutes of Adriatic towns, as well. The Statute of the city and island of Korčula in Chapter 49, entitled “On arson of another’s home” (*De comburentibus alienam domum*), provides that in a case of malicious arson of a house, of a threshing-floor or hay, confirmed by two trustworthy witnesses, a perpetrator’s right hand would be cut off and he would have to compensate the damage. If the burner was not found, the villagers from that village had to pay for the damage (*Item statuimus, quod si quis derobaverit, vel combuserit alienam domum, mandram, copam, vel metam bladi ex aliquo dolo, vel iniquo modo et probatum fuerit per duas testes fide dignos, tali malefactori amputetur manus dextera et emendet dampnum domino domus, mete, vel mandre. Et si talis malefactor non reperiretur, illi de illo casale emendet dictum dampnum*).⁹⁵

The Statute of Dubrovnik, Book VIII, Chapter 35, entitled “On huts’ arsons—how the damage must be repaired and compensated” (*De combustionibus capannarum qualiter debeant emendari et solvi*), orders: “If any hut in Dubrovnik’s district should be burnt ... and the criminals who set the fire could not be found, a damage ... shall be compensated by the people from that region” (*Si capanna aliqua fuerit combusta per districtum Ragusii ... et malefactores qui ignem posuerint sciri non poterunt ... statuimus quod dampnum ... emendari debeat per homines illius contrate*).⁹⁶

6 Brawl (So-called “Potka”, Потка)

King Milutin’s chrysobull issued to the monastery of Saint George near Skoplje and two articles of Dušan’s Law Code (77 and 82) mention a common crime against agrarian property called *potka* (Потка). The meaning of the word is not clear, but it seems that Đuro Daničić gave the right interpretation, saying that *potka* is “violation of boundaries and a fine for that” (*violatio finium atque ejusque pretium*).⁹⁷ According to Teodor Taranovski and Alexander Solovjev, in legal documents *potka* has three different meanings. Originally it was a mark installed on a boundary, for example, a signed bough placed on the meadow in order to show where the limits are.⁹⁸ Bulgarian scholar Stefan Bobčev (Cre-

rukopisima starije redakcije” [“Crime of Arson in the Legislation of Tsar Stefan Dušan According to the Oldest Manuscripts”], *IČ* 60 (2011), pp. 139–151.

⁹⁵ Ed. Hanel, p. 49.

⁹⁶ *Statut grada Dubrovnika*, p. 436.

⁹⁷ Daničić, *Rječnik iz književnih starina*, vol. II, p. 398. Cf. Mažuranić, *Prinosi*, p. 1051 (*potka*).

⁹⁸ Such an interpretation was given by Vuk Karažić. He translated the Serbian word *potka*

фань Бобчевъ) wrote that the twentieth-century peasants in the neighbourhood of Sofia said: "They went to place *potka* on the meadows, i.e. to fix the limits" ("отишли да си турят потка на ливадетъ, т. е. да ги разграничват").⁹⁹ The second meaning is a violation of a boundary's mark and any other crime against agrarian property. The third meaning denotes a fine for such a violation.¹⁰⁰ Saint George's chrysobull on several places¹⁰¹ and Saint Stephen's charter once¹⁰² mention *potka* as one of the fines payable to the monastery.

As *potka* was a common name for several crimes against agrarian property, the question was what type of crimes were considered as *potka*. The most complete listing of agrarian property's violations, called *potka*, is exposed by a chrysobull of Bulgarian Tsar Constantine Tikh Asen (Bulgarian *Константин Тих Асен*, 1257–1277), presented c.1258 to the same monastery of Saint George near Skoplje, saying:

If anyone enters on the manor of Saint George, in any village without asking the archimandrite, either on mountains, or on pastures, or on enclosures, or on fishing and hunting-grounds, or if he cuts trees and clears a forest on the church hill, or if he installs a water-mill on church water, or grazes horses on church land, or leads water from church land, or ploughs a field without the hegoumenos' benediction ... let him pay 6 perpers to the Tsar.

Аще кто вълезе на метохие Светаго Георгиа Ѹ коемъ либо селѣ, безъ архимадритова въпрошениа, или въ планина, или пашица, или въ засѣлъ, или въ ловица роенна или звѣрна, или лѣсъ и дрѣво Ѹстѣни въ църковнъмъ брѣдѣ, или водѣници поставити на църковнои водѣ, коиа тече отъ църковна извода, или конеи пасти на църковнои земли, или родъ поведе прѣзъ църковнѣж земниж, или нивѣ поурадвѣ безъ игѫменова благословенія ... и да са продастъ въ демосиј. S. пер'пер.¹⁰³

with the German terms *der Eintrag* and *Einschlag* and Latin *subtemen*. *Srpski rječnik*, p. 553.

99 S.S. Bobčev, "Starovremenskata i segašna potka" ["Ancient and Modern Potka"], *Juridičeski pregled* 26.1 (1925), pp. 3–11. Cf. M. Barjaktarević, "Potka Dušanova zakonika i našega doba" ["Potka in Dušan's Law Code and in Our Epoch"], *Zbornik Etnografskog muzeja u Beogradu* (1951), pp. 232–233.

100 Taranovski, *Istorija*, vol. II, p. 101; Solovjev, *Zakonik cara Stefana Dušana*, p. 238.

101 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 317, 324, 326.

102 Ibid., p. 465.

103 Ibid., p. 257.

The charter does not use the word *potka*, but a few lines above we find the term *поткожиже*, which allows to conclude that the quoted violations of agrarian property were considered as *potka*.

King Milutin's chrysobull to Saint George's monastery, which was based on a great number of previous monarchs' charters, mentions several cases which were all treated as *potka*: 1) if someone leads water from church land, he has to pay *potka* in the amount of 12 perpers to the *sebastos* (И възбранѧен водѣ тѣци на црквеноу землю, идѣже єсть и шт испрьва тѣкла законнаѧ вода, да плати потку севастоу .Вl. перьперь);¹⁰⁴ 2) whosoever unlawfully alienates a fief (*pronoia*) must pay 12 perpers as *potka* (И оу Рѣусах' експриска да н'єсть, ни да се прода нива ни виноград, ... Кто ли се вбреџе оу Рѣусах експрикисадъ или прода вивоу или виноград, ... да плаќиа потку цркви .Вl. перьперь).¹⁰⁵ The same fine of 12 perpers was provided in the same chrysobull for three more violations of agrarian property, which were not explicitly called *potka*, but they could be considered as *potka* in wider terms:¹⁰⁶ 1) whosoever without the hegou-menos' benediction ploughs a field or a garden or installs a threshing-floor on church land has to pay 12 perpers (Ако ли безъ игоумнова благословленїя вивоу повѣре или врѣтьочини на црквенои земли да плати оу цариноу .Вl. перьперь ... Такожде и за гоумна запрѣщаємъ: такожде глоба .Вl. перьперь); 2) if someone without the hegou-menos' benediction leads water from a church "head", he must pay 12 perpers (Ако ли безъ игоумнова благословленїя повѣде кто шт црквне главе водоу да плати .Вl. перьперь оу цариноу); 3) if someone without the hegou-menos' benediction cuts anything (in the church forest), he must pay 12 perpers (Ако ли безъ игоумнова благословленїя сѣве цю любо да плати .Вl. перьперь оу цариноу).¹⁰⁷

Article 77 of Dušan's Law Code treats *potka* as a brawl—a clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace: "A brawl between villages, 50 perpers; but between Vlachs and Albanians, 100 perpers. Of the fine, one half to the Tsar and one half to the owner of the village" (Пот'ка меѓю сел'ми, ћ. перьперь, а влахомъ, и др'банасомъ, ћ, перьперь, и тезији пот'ке цар ћ половина, а господароу половина че боудѣ село).¹⁰⁸ The Code does not speak on what would have been the reason for a brawl between villages, but there is no doubt that quarrels occurred due to boundary disputes.

¹⁰⁴ Ibid., p. 322.

¹⁰⁵ Ibid., p. 324.

¹⁰⁶ Taranovski, *Istorija*, vol. II, p. 102.

¹⁰⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 327.

¹⁰⁸ Burr, "The Code of Stephan Dušan", pp. 212–213; Novaković, *Zakonik*, p. 62; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

Potka was also mentioned in article 82, already quoted (see Chapter 5, section 2.1), as a fine for the grass that herdsmen (Vlachs and Albanians) had consumed (да плати пот'къ, и цю је испасъль). The spring and autumn migrations to and from mountain pastures were the occasions of much movement of Vlach and Albanian shepherds, with their families and flocks. Serbian lords and peasants were concerned that they and their pastures should not suffer from these activities.

7 Straying (*Popaša*, Попаша)

In mediaeval Serbia the most important violation of agrarian property was straying (so-called *popaša*)—a case when any man's cattle, permitted by its owner, trespass on another's pasture and graze. Monastery charters very frequently mention somebody else's herds trespassing and eating growing grass on pastures belonging to the Church. In Saint George's chrysobull we can read: "If anyone trespasses with his cattle on church pastures without the hegoumenos' benediction, let him pay on duty 100 perpers, and one third of that fine to the church. And if a measure of church livestock perishes that winter, let those who have grazed off church pastures pay for this straying" (Ако ли кто оулѣззе оу црквона пашица безъ игоумнова благословленія с конимъ любо добит'комъ да плати оу цариноу .Р. перьперь, а вт тѣхъ гловъ цркви третие. И цю помре цркви добитка, тои зими да все плате тижи кои боудоу попасли пашица црквона).¹⁰⁹ The Dečani chrysobull provides that if someone is grazing his herds all the time on the monastery's mountains, without giving rates to the monastery, "he has to give to the King 500 rams" (к'то ли здѣрани и не дастъ да плати кралев' ствоу ѹмоу .е. съть ввѣнъ).¹¹⁰

Interesting information on straying can also be found in Tsar Dušan's chrysobull concerning the manor of Saint Peter Koriški (17 May 1355):

And on the mountain of Saint Peter, as it was written in the old chrysobull ... let there be no forcible straying by any lord, great or small, neither by Vlach nor by Albanian. And whosoever be found, great or small, grazing by force, every kephale of the City of Prizren or lord of the land shall take from them 300 rams. There shall be neither judgment nor trial, as it was written in the chrysobull of the Sainted King,¹¹¹ nor my

¹⁰⁹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 327.

¹¹⁰ Edited by Ivić and Grković, p. 128.

¹¹¹ King Milutin.

imperial writs, as My Majesty tried to Albanians, and Povika Radoslav¹¹² pronounced a sentence.

И планина светога Петра цио пише хрисовоуљ стари ... да ихъ не пасе поси—линемъ иикии властелинъ малъ ни велись, ни влахъ, ни ар'банасинъ. Кто ли се наре малъ и велись и има пасти силомъ всаки настојеци кепалица града Призрене или господарь земльски да оузме на нихъ .т. ввънь. Ни соуда ни прѣ, како пише хрисовоуљ светаго краля и книга соудовна царства ми, како имъ је соудило царство ми са Арбанаси, и оузель на нихъ Повика Радославъ потъкоу.¹¹³

Analysis of the cited fragment reveals that the crime of straying could be committed not only by a haughty nobleman and his company, but by nomadic herdsmen as well. The Tsar ordered that there would be no trial because a precedent¹¹⁴ already existed—a decision pronounced by Radoslav Povika, *kephale* of Prizren. For penalty, mentioned in the text, the chrysobull uses the term *potka*, obviously because *popaša* (straying) was considered as the most common violation of agrarian property and treated as a type of *potka* in a larger sense. All further rulings were to be passed on the basis of principles established in prior cases.

For forcible straying, Tsar Dušan's chrysobull presented to the monastery of Saint Nicholas in Dobrušta prescribed an alternative, allowing a choice between a penalty in money of 500 perpers and a pecuniary penalty of 500 rams (Кто ли начне сїлѡмъ пасты, да плати господароу настојецимоу петь съть перперь или петь сотъ вѣновъ).¹¹⁵

However, Tsar Dušan's charter to the monastery of Saint Archangels in Lesnovo (1347–1350) shows that strict rules on forcible straying were not always applied: “All mountains and pastures and winter-shelters shall belong to the church of Saint Archangels. If someone starts grazing or spending the winter in shelters by force, let him give grass-tribute, according to the law” (И цио јесть планина црквона и Пашница и зимовишта, всѣмъ тѣмъ да обладдаје црквъ

¹¹² Radoslav Povika was *kephale* in Prizren, brother of Great Logothet Đurđe and headman (*čelnik*) Miloš. After Dušan's death he lived in Serres, and in 1365 he executed a duty of *kephale* and great headman of the Empress Helen, Dušan's widow. He was her man of confidence.

¹¹³ Edited by S. Mišić, *ssa* 11 (2012), p. 74.

¹¹⁴ An adjudged case or decision of a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law.

¹¹⁵ Edited by S. Mišić, *ssa* 15 (2016), p. 133. We have already noted that the editor thinks that the chrysobull was a forgery, done in the monastery of Hilandar, c.1365.

Светаго Архаггела. Аци те ли ктo начнеть по силе пастi или зимовати, да дадe трапничу цркви по закону).¹¹⁶ So, in that case a penalty for forcible straying did not exist. A perpetrator only had an obligation to give grass-tribute, so-called *travnina*—a regular indemnity of using church pastures. It is very difficult to explain such an exception.

Dušan's Law Code mentions straying only in article 76, entitled "Of straying" (Ω попаши): "As to straying. If any man's cattle trespass on corn, or a vineyard, or a meadow recklessly, then let him pay for this straying what the valuers¹¹⁷ assess. But if he trespass knowingly, let him pay for the straying and six oxen" (За попашд. Ако ктo попасе жито или виноградъ, или ливадъ гръ-хомъ; този попашд тоузи попаш, да плати що рекд доушевници кон цвнс; ако ли нахвалицдм попасе, да плати попашд и .S. воловъ).¹¹⁸ The Code marks a difference between straying committed recklessly and intentionally.¹¹⁹ In the first case there exists liability for damage: what the valuers assess. Valuers (*duševnici*, *доушевници*) could be a type of primitive expert witnesses—persons who by reason of education or specialized experience possess superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or deducing correct conclusions. Intentional straying is a criminal trespass (when a person without effective consent enters onto the property of another), and beside indemnity a perpetrator has to pay a fine of six oxen. An archaic pecuniary penalty in cattle testifies that this provision originated from the old customary law.

¹¹⁶ Novaković, *Zakonski spomenici*, p. 681, para. xxvi.

¹¹⁷ The word translated as "valuers" is *duševnici* (*душевници*), meaning persons who estimated value by conviction, on their soul (Serbian *duša*, *душа*). Later on, in Montenegro, they were called *stimaduri* (*стимадури*), from Italian *stimatore* (Mažuranić, *Prinosi*, p. 288; Solovjev, *Zakonik cara Stefana Dušana*, p. 238).

¹¹⁸ Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 61; *Zakonik cara Stefana Dušana*, vol. II, p. 246; vol. III, p. 120.

¹¹⁹ See Chapter 17, section 3.

PART 6

Court System and Trial Procedure

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Court System and Jurisdiction

A court is a body of government organized to administer justice. A unified court system did not exist in mediaeval Serbia. As in other feudal societies, the status of persons determined their legal rights, and this was also reflected in the existence of several types of court. The basic courts were feudal courts, where a lord had the right to hold a court for his tenants (“court-baron” in English law). The ecclesiastical courts (“Court Christian” in English law) administered justice to the clergy, as well as to laymen in some legal cases that were under the jurisdiction of the Church. The inhabitants of maritime towns and cities conquered from Byzantium were under the jurisdiction of their city courts. Foreigners living in Serbia had their own courts, and for trials between Serbs and Ragusans, justice were administered by a special mixed court, called *stanak* (*stanicum*). Finally, Dušan’s Law Code established the Imperial Court of Justice.

1 Feudal Courts

The manor was originally a tract of land granted out by the sovereign to a lord or to the Church or monastery, in fee or in hereditary estate. In English law it was otherwise called a “barony” or “lordship”, and appendant to it was the right to hold a court, called “court-baron”. The information we have from Serbian legal sources mostly mentions feudal courts that existed on manors (estates) that were the property of monasteries. We can suppose that temporal lords also had the privilege to administer justice to their serfs, but the data presented by the Serbian legal documents are rare and indirect.

1.1 Feudal Courts on Monastic Estates

Among the immunities that Serbian monasteries had, a very important right was that of holding a court and administering justice to all commoners living on monastic estates. Serbian legal documents clearly testify that only church authorities could try their villagers. That order was already expressed in Chapter 12 of Saint Sabba’s *Typicon* of the monastery of Hilandar, entitled “On the freedom of the monastery” (О свободној быти монастыря):

So, I order to all of you from Lord God Pantokrator that this holy monastery must be free from all authorities, and from protos and from other

monasteries, and from any other bishops and that is not subjected to any law, either imperial, or ecclesiastical, or any other, except under the only celebrated in song Mother of God Teacher, and by prayer of our most blessed and holy father, monastery hegoumenos. And it must be kept, and administred, and led, and governed.

Заповѣдаю оубо всѣмъ вамъ. шть господа бога всѣдъжитела. свободноу быти светомоу семоу монастыроу, шть всѣхъ тоу владыкъ и шть прота и шть иныхъ монастырь и шть особныхъ владыкъ и ни подъ кыми же да юсть прав'дами ни царьскими, ни црыковными ни ин'емъ никым'ре. Ни подъ юдиноу прѣпѣтою Богородицею наставницею и прѣблаженаго и свѣтаго штьца нашего молитвою игоуменоуциаго въ ніемъ. съблюдати же и исправляти и крьмити и вѣвладати.¹

It is clear that the monastery was excepted from all authorities, temporal and spiritual, and that power was exercised strictly by the hegoumenos. The right to hold a court was not explicitly mentioned, but it was surely understood, because it belonged to "all divine liberties" (У всакон божъствынен свободе)² that the monastery enjoyed.

More precise is King Stefan Uroš's charter to the Holy Virgin monastery in Ston (c.1252). "The church shall enjoy all liberties and shall be excempted from all authorities (Си же храмъ Светыниe Богородице въ всакон свободѣ да боудет ... шт всѣхъ влادоуцихъ) and the administration of justice for all trials among monastery's villagers and their trials with a people living outside of the monastery shall be done by the hegoumenos (На господствуюциаго прѣложихомъ властъ и всако исправление юже въноутрьнихъ и вънѣшихъ правдахъ)".³

King Stefan Dragutin's charter presented to the monastery of Hilandar (1276–1281) orders:

In the case of villagers belonging to this Holy Church, who have actions among themselves, they shall be tried before the hegoumenos and church dignitaries except [for pleas] touching high treason, enticing man, land and murder. And a civil court shall be before the King or one of the King's servants, requested by the hegoumenos and monks of a monastery.

¹ *Sveti Sava, Sabrana dela*, ed. Jovanović, p. 64. Cf. Chapter 12 of the Studenitza monastery *Typicon*, ed. Jovanović, p. 136.

² Charter of Archbishop Sabba I (Saint Sabba) presented to the monastery of Saint Nicholas on Vranjina. Mošin, Ćirković, and Sindik, *Zbornik*, p. 127.

³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 197.

И люде сије светије цркве, пре које имају мегоу собомъ, да се пријо прѣд игоуменомъ или прѣд владаљци црковнъыми разгвѣ невѣре и провода земље и вражде. А съ земљаны соудъ да јесть прѣд кралемъ или прѣд јединѣмъ юдомъ владаљци двора краљева љојега испроси игоумынь и братыла.⁴

The quoted provision reveals that feudal courts had jurisdiction over all trials among church villagers, except over crimes of high treason, murder or helping a villager to flee from his lord to another land, and over all litigations concerning the land, what was in the competence of the King's Court. All trials that church villagers had with other laymen belonged also to the jurisdiction of the King's Court. So, King Dragutin's charter drew a line between pleas which were in the sphere of the King's Court (so-called "pleas of the crown") and cases in the jurisdiction of the feudal court. Further charters had to accept such a differentiation of jurisdiction. The only exception is King Milutin's charter to Saint George's monastery, which does not mention reservation of jurisdiction belonging to the King's Court. The charter clearly orders:

Nobody from the temporal authorities can try any villager from Saint George's manor and tie him without the hegoumenos' trial ... Whosoever be found to have subjected to trial any villager from Saint George's estate ... let him be cursed from all true-believing and sainted Tsars and Kings and let him pay a duty of 200 perpers ... Nobody from my royal dignitaries in my Kingdom can try a man from Saint George's estate ... And if any villager from Saint George's manor be found guilty, only the hegoumenos can try him.

И никто да не сѹди чловѣка Светаго Георгија Гоѓа и побѣдоносца въ бра- нехъ ѿ власти вишеписанихъ, ни да га свѣже везъ и гѹменова сѹда ... Кто ли се наре сѹди чловѣка Светаго Георгија ... да јесть проклеть ѿ всѣхъ сихъ правовѣрнихъ и светихъ царь и краљ вишеписанихъ, и да плати ё царину .С. перперь ... чловѣку Светаго Георгија да не соуди никон владоуци по државахъ краљевства ми ... И кто се наре комоу кривъ чловѣка Светаго Георгија да се при прѣдъ игоуменомъ.⁵

We must note that Saint George's chrysobull was promulgated in the area conquered from Byzantium, and it contains confirmation of previous charters

⁴ Ibid., p. 268.

⁵ Ibid., pp. 317 and 326.

of Byzantine and Bulgarian Emperors. However, Byzantine Emperors excempted three crimes from the jurisdiction of monastic courts: homicide, rape and hoards (φόνος, παρθενοφθορία καὶ εύρεσις τοῦ θησαυροῦ).⁶ All fines from the quoted pleas were collected by the Imperial treasury, but Emperor Andronikos III Palaiologos ceded even those fines to the monastery of Zographou (charters from 1328 and 1342).⁷

Although feudal courts on monastic estates could not administer justice in all pleas, all fines pronounced by the King's Court concerning the monastery's villagers belonged to the Church. The Church received all the fines, which were seen as a source of revenue for the Church. Already the Žiča chrysobull says that a fine for stubborn refusal of a church serf to appear before the King's Court shall be taken by the Archbishop (Да ако не поиде по пеѹати, то тѣзи да се ѹписдю пеѹаты ѹ кралла, и да ѹзима архујепискпъ севгв).⁸ In Saint Stephen's chrysobull we read: "And wherever a judgment is being made, every fine goes to the Church" (и гдѣ гоðд се соудь чини всака гловба цркви).⁹ More precise is the Gračanitza charter: "And wherever a man of the Church¹⁰ is engaged in litigation on King's Court, a fine belongs to the Church" (И гдѣ гоðд се при црквовни ѹловѣкъ на кралевѣ соудѣ да је гловба црквна).¹¹ The Dečani chrysobull underlines: "No fines are to be taken by the King" (никоје глове да не оуѓима крал).¹² King and Tsar Stefan Dušan, in his charters written in Greek and presented to the monasteries of Saint John the Baptist on Mount Menoikeion (1345), Iviron (1346), Zographou (1346) and Esphigmenou (1346) on Holy Mountain, says that he ceded all public fines (τὰ δημοσιακὰ κεφάλαια) to the monasteries, including fines for homicide and "rape of a virgin" (τοῦ φόνου καὶ τῆς παρθενοφθορίας).¹³

6 Emperor Andronikos II Palaiologos' charter from the year 1312 to the Russian monastery of Saint Panteleimon on Holy Mountain (*Acta, presertim Graeca, Rossici in monte Athos monasteri*. Акты Русского на святомъ Афонѣ монастыря св. великомученика и цѣлителя Пантелеймона, Kiev 1873, p. 166); two charters presented in 1334 and 1347 to the monastery of Esphigmenou on Holy Mountain (*Actes de l'Athos. III. Actes d'Esphigménou publiés par le R.P. Louis Petit et W. Regel, BB, Приложение къ XII тому, № 1*, Sankt Petersburg 1906, pp. 26 and 41).

7 *Actes de l'Athos IV. Actes de Zographou*, édités par W. Regel, E. Kurtz et B. Korablev. VV XIII, Sankt Petersburg 1907, pp. 60, 75, 78, 82. Cf. Solovjev, *Zakonik cara Stefana Dušana*, p. 198.

8 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

9 *Ibid.*, p. 465.

10 I.e. a tenant of Church lands.

11 Mošin, Ćirković, and Sindik, *Zbornik*, p. 503.

12 Ed. Ivić and Grković, p. 136.

13 Solovjev and Mošin, *Diplomata greaca*, pp. 10, 48, 50, 68, 100 and 478.

King Dušan's chrysobull donating the church of the Most Holy Virgin in Lipljan to the Hilandar's pyrgos in Chroussia (1336–1343) guarantees to the church villagers that they shall be tried only by the King and steward (и да имъ н'встъ соуда, развѣ прѣдъ кралюмъ и прѣдъ икономомъ настоенчимъ).¹⁴ The charter saved the old privilege according to which local temporal authorities could not try the monastery's villagers.

However, King Stefan Dušan's chrysobull for Htetovo monastery (1343) established a new rule: "And for all litigations that the people of the Church have on My King's Court or before other judges or court dignitaries, great or small, on the territory of My Kingdom, all fines, great or small, pronounced against the Church people shall be taken by the Holy Church" (И ѿ се пре црксов'ны людие на двору кралевьства ми, или прѣдъ инѣми соудигами, или прѣдъ инѣми владоучими, малыми или великыими, въ вѣласти кралевьства ми, ѿ чини глоба на црксов'ныхъ людехъ мала и великаа, в'сё да оуздима светага цркви).¹⁵ So, people of the Church could be judged even before local authorities, but the pronounced fines would belong wholly to the Church.

It seems that the new provisions, set up in the Htetovo chrysobull, did not penetrate in all parts of the State, because the Lesnovo chrysobull (1347–1350) orders: "And for all pleas that the bishop cannot judge, let them be brought to me, the Tsar, and no other court shall judge" (И о соудѣ ѿ се не може расоудить прѣдъ епископомъ, да греде прѣдъ царство ми, да инде ни где да имъ не боуде соуда).¹⁶ It is evident that the charters are not consistent, because the Lesnovo chrysobull does not allow judgment of local authorities: all pleas exempted from the feudal church court are in the exclusive sphere of the Imperial Court.

Dušan's Law Code introduced an important transformation of the rule pronounced by King Dragutin's charter to Hilandar (1276–1281), drawing a line between pleas in jurisdiction of King's Court and cases in competence of feudal courts on monastic estates. Article 33, entitled "Of the trial of people of the Church" (О соудѣ людии црксовныхъ), begins with a resolute order: "People on the Church estates are judged before their own Metropolitan, or bishop or hegoumenos for every plea. If the disputants are on the property of one church, they shall be judged before their own church: but if they are of two churches, both churches shall judge them" (Црксовнии людїе въсакои правдѣ да се соудѣ прѣдъ своими митрополити и прѣдъ, епископы, и игумены; коиа ста чловѣка

¹⁴ Edited by M. Ivanović, *ssa* 13 (2014), p. 43. Cf. article 194 of Dušan's Law Code, already quoted.

¹⁵ Edited by M. Koprivica, *ssa* 13 (2014), p. 150.

¹⁶ Novaković, *Zakonski spomenici*, p. 680, para. xxiii.

веба јдне цркве, да се судита прѣд својим црквам; или шт двоју црквљу
боудбета два чловѣка, која се прѣнта, да имъ съде веб в цркви).¹⁷ Article 30,
entitled “Of those who molest clerics” (О оуѓванији црковнаго чловѣка), starts
with the wording: “Henceforward no authority may molest a monk or a serf of
the Church” (Од сеља да не оуѓвји ни једина власт калѓера, или црковнаго
чловѣка).¹⁸ The intent is clearly to confirm the privileges of the monasteries
granted in several charters, in cases where “people of the Church” are tried:
every plea shall be judged before Church authorities and there shall be no reservation
(a right created and retained by a grantor) of the King’s Court.

It is important to underline that article 33 provides trial procedure also in
the case when disputants are “of two churches”, i.e. villagers from two different
monasteries. The Code established the mixed court, judging by two hegou-
menos or bishops. However, article 33 does not order what happens when one
of litigants is a man of the Church and the other a worldly lord’s villager. This
matter was explained in Saint Archangels’ chrysobull: 1) “And when the dis-
putants are only the people of the Church, nobody shall judge them except
the hegoumenos” (О кьди се пре сами людни црковнији, да имъ никто не соудији
разреће игоумњи); 2) “And for all litigations with other villagers touching murder,
land, horse-thieving, enticing man, let them come before the Tsar” (А ћо се пре
се ин’ми людми за вражду, за землю, за конь, за проводъ, да идоу прѣдъ
цара); 3) “And for other trials, let them come before the Metropolitan and
hegoumenos” (А за ине соудове да идоу прѣд митрополита и прѣдъ игоумна);
4) “and whenever there be a trial, all fines shall go to the Church” (и гдѣ люд
боуде соудъ, глоба да јесть цркви).¹⁹ So, the Church authorities shall try all law-
suits either between the monastery’s villagers only, or between “people of the
Church” and other serfs, except for the major crimes which were in the compet-
ence of the Imperial Court. The confirmation of the rule that all pleas involving
Church villagers shall be judged before feudal courts on monastic estates can
also be found in two of Tsar Dušan’s chrysobulls promulgated at the Council
in Krupište (2 and 17 May 1355, last year of Emperor’s life and reign) in favour
of Hilandar monastery. In the act from 2 May, Hilandar’s hegoumenos Dorotey
presented the appeal to the determination of boundaries of pastures Kruščica
and Ponorac, and complaints to local noblemen who relocated to the market-
town Kninac. Tsar Dušan confirmed these estates and ordered: “Let nobody

¹⁷ Burr, “The Code of Stephan Dušan”, p. 204; Novaković, *Zakonik*, p. 31; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

¹⁸ Burr, “The Code of Stephan Dušan”, p. 204; Novaković, *Zakonik*, p. 28; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

¹⁹ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 112.

try on Hilandar's estate, for any plea, major or petty, neither for land, nor for murder, only elders appointed by the holy monastery [may try] and judges appointed by them" (И никто да не соуди метохие хилан'дарскои ни за једнь соудь, ни мали ни големы, ни за землю, ни за враждоу, нь да съдѣ стар'ци, коихъ посила светыи монастырь и соудые конъкъ шни поставе).²⁰ The second chrysobull speaks on the property of Saint Peter's church, built by Hilandar's elder Gregory, ordering: "Let nobody try on Saint Peter's monastic estate for any plea, major or petty, neither for land, nor for murder, only the authorised Metropolitan of the City of Prizren [may try]" (Никто да не соуди метохии светомоу Петроу ни за једнь соудь малъ и големъ, ни за землю, ни за враждоу, тъкмо настоиещи всаки митрополитъ града Призрѣна).²¹ However, the document from 2 May adds: "If someone of them [appointed elders and judges] adjudged wrongly, the authorised kephale shall try them according to my Imperial law and before my Imperial Court, as is written in the chrysobull of the Sainted King" (Ако ли се нали ѿтъ нихъ, кто є криво соудиаъ, закономъ да га посоуди настоищи кіефлайд и соудимъ царьства ми, како имъ пише христовоу светаго краля).²² As a remedy for the unlimited jurisdiction of feudal courts on monastic estates there existed appeal to a court of the kephale of an injustice committed by a Church court as a lower tribunal. Before the court of the kephale, it would be attempted to correct or resolve any error or injustice.

The Church official who tried monastery serfs was appointed by a superior called a hegoumenos (*iguman*, игоумень) and in churches and monasteries that were episcopal sees bishops (*episkop*, епископъ, епископъ, юепискоупъ, пискъп) and metropolitans (*Mitropolit*, митрополитъ). In some cases justice was administered by a steward (*ikonom*, икономъ). The hegoumenos tried either alone or using the monastic estate's officials called *vladalci crkveni* (владальци црквины) = "Church dignitaries". Some charters mention special "judges" (*sudije*, соудыє) appointed by elders (*starci*, старци). Saint George's chrysobull orders that beside the hegoumenos his *otrok* (штрокъ) may try and collect fines as well.²³ The executive officials on feudal monastic courts were "treasurers who will collect the fines and deliver them to the Church" (... и да се поставе црквниихъ людїе глобарїе кои ге събирати тє глобе, и прѣдавати цркви).²⁴

²⁰ Edited by M. Koprivica, *ssa* 15 (2016), p. 114.

²¹ Edited by S. Mišić, *ssa* 11 (2012), pp. 73–74.

²² *ssa* 15 (2016), p. 114.

²³ See Chapter 6, section 3.2.

²⁴ Article 194 of Dušan's Law Code. Burr, "The Code of Stephan Dušan", pp. 537–538; Novaković, *Zakonik*, p. 145; *Zakonik cara Stefana Dušana*, vol. III, p. 276.

1.2 “Court-Baron”

Serbian legal sources promulgated before the Law Code of Stefan Dušan do not contain data on the existence of feudal courts on worldly lords' manors (“Court-Baron” of English law). Dušan's Law Code regulates explicitly only the jurisdiction of temporal lords over *otroci* (“In the case of slaves, they shall be tried before their own lords”), except for crimes considered as *casus regales* (*cas royaux*, pleas of the crown), such as bloodshed, murder, theft, brigandage and harbouring men, when “they shall go before the judges”.²⁵ Article 115, already quoted, mentions a man who “has fled from his lord from court”. According to this wording it is clear that temporal lords also had the right to hold a court on their manors. However, as the second part of article 115 orders, if a villager “produce the Tsar's letter of pardon, it shall not be contradicted”.²⁶ “This clause once more illustrates the tendency of Dušan's legislation to strengthen the hold of the landowners upon their men and their power of judgment over their own villeins and serfs”.²⁷

Dušan's Law Code contains one more provision that implicitly indicates the existence of feudal courts. This is article 183 entitled “Of members of a supply unit” (Ц станици):²⁸ “All members of a supply unit of my Empire who have actions among themselves touching murder, brigandage, theft, killing, harbouring or land, shall appear before the judges of the court” (Станици въси царства ми да греда прѣд соудїе цио имаю соудъ мегю собомъ; за вражда, за гоусара, за тата за прѣемъ людїи, за крьвь, за землю).²⁹ If we accept the opinion that the Serbian word *stanik* (станикъ)³⁰ denotes a member of a supply unit (*komordž-*

²⁵ Article 103. Burr, “The Code of Stephan Dušan”, p. 516; Novaković, *Zakonik*, p. 79; *Zakonik cara Stefana Dušana*, vol. III, p. 126. See Chapter 5, section 3.2.

²⁶ Burr, “The Code of Stephan Dušan”, p. 519; Novaković, *Zakonik*, p. 88; *Zakonik cara Stefana Dušana*, vol. II, pp. 198 and 251; vol. III, p. 130.

²⁷ Burr, “The Code of Stephan Dušan”, p. 519, comment on article 115.

²⁸ The Serbian word is *stanik*, *станик* (станикъ), plural *stanici*, *станици* (станици). Burr, “The Code of Stephan Dušan”, following the interpretation of Stojan Novaković (*Zakonik*, pp. 256–257), translated the word *stanik* as “shepherd” (p. 535), what is incorrect.

²⁹ Burr, “The Code of Stephan Dušan”, p. 535; Novaković, *Zakonik*, p. 141; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

³⁰ The Old Serbian word *stanik* is not clear, and it has provoked different interpretations. Duro Daničić supposed with caution that the word means *incola* = colonist, settler (*Rječnik iz književnih starina srpskih*, vol. III, p. 163). Stojan Novaković wrote a whole article (“Was bedeutet *станикъ* in dem Gesetzbuche Stephans Dušans”, *ASPh* 10 (1887), pp. 570–581) trying to explain the meaning of the term *stanik* and expressed the idea that it is a synonym for the words *sebar* (commoner) and *zemljjanin* (man of the land). However, preparing the second edition of Dušan's Law Code, he changed his mind and wrote that *stanik* is a general name for all shepherds, stablemen, sheepmen, Vlachs and Albanians.

ija, коморција),³¹ it would mean that those courtiers had to appear before the judges of the Imperial Court for criminal cases which the Tsar has reserved for his own court. But for petty cases they might be tried before their own elders. Such a conclusion begs being made as article 187 mentions “the elder of the supply unit’s members”³² (*старти прѣдь станови*).³³

2 Ecclesiastical Courts (“Court Christian”, *Curia Christianitatis*)

The ecclesiastical courts (in England often called “Court Christian”) is a generic name for certain courts having cognizance mainly of spiritual matters. They had jurisdiction over matters pertaining to the religion and ritual of the established Church, and the rights, duties, and discipline of ecclesiastical persons as such. In mediaeval Serbia ecclesiastical courts administered justice to all clergy for civil and criminal cases and to all the Greek-Orthodox population of the State for the pleas which the Church proclaimed as being in its jurisdiction (so-called *duhovni dlj*, *дѹхѹвни дљьгъ*, *τὸ ἐκκλισιαστικὸν πρᾶγμα* = “spiritual duty”). Church officials tried all commoners living on monastic estates as well. This has already been described above.

2.1 Ecclesiastical Courts over Clergy

Starting from the privileges given to the Christian Church by Roman and Byzantine Emperors (Constantine the Great, Theodosius, Arcadius, Justinian I, and others) and from the canons of Ecumenical Councils, the ecclesiastical court became an important institution of mediaeval society with the exclusive right to administer justice to all clergy. The development of the ecclesiastical court as an independent one was a long process, but it was already completed when

As argument, he quoted articles 187 and 189 of the Code where the wording *stanovi carevi* (*станови цареви*) means “herds of the Tsar” (*Zakonik*, p. 257). But Constantine Jireček (“Das Gesetzbuch des serbischen Caren Stephan Dušan”, pp. 184–185) proved that *stanovi carevi* means “Tsar’s luggage” when he travels. Even the word *stan* can denote “luggage” (*impedimenta*), because article 125 of the Code orders that a traveller has to hand to the innkeeper “his horse and all his luggage” (*коњ и стань везь*). Alexander Solovjev (“Jedna srpska župa”, pp. 31–33; *Zakonik cara Stefana Dušana*, pp. 322–323) fixed the meaning of the word *stanik* on the Tsar’s courtiers whose duty it was to take care of the Tsar’s luggage and who had to supply him and his escort (in Serbian *komordžija*). His opinion was accepted by Teodor Taranovski (*Istoriјa*, vol. II, p. 131 and vol. III, pp. 143–144) and Nikola Radočić (*Zakonik Stefana Dušana*, p. 138).

³¹ Maybe it could be compared to the lord chamberlain of the household of English law.

³² “The elder of the shepherds” in Burr’s translation (p. 536).

³³ Novaković, *Zakonik*, p. 143; *Zakonik cara Stefana Dušana*, vol. I, p. 206.

Nemanjić's State appeared on the historical stage. Provisions of Saint Sabba's *Nomokanon* prove that the legal existence of ecclesiastical courts had already been adopted in mediaeval Serbia.

The *Syntagma* of Matheas Blastares contains Chapters Δ (Δ) - 9 and 10, entitled "On courts and lawsuits between clerics and laymen" (Περὶ δικαστηρίων καὶ τῶν δίκας ἔχόντων κληρικῶν τε καὶ λαϊκῶν, Οἱ σούδιλιψιχὶ πρεψῆς πριγυπτίνικεὶ καὶ λιοντίνι) and "On the bishop and cleric who are tried because of their offences" (Περὶ τῶν δικαζομένων δὲ οἰκείᾳ ἐγκλήματα ἐπισκόπων καὶ κληρικῶν, Οἱ πρεψῖχὶ σε ἢδια σύγρεψηνία επίσκοπος πριγυπτίνι).³⁴ These two chapters expose the whole historical development of ecclesiastical courts over the clergy, but the Serbian editors of the *Abridged Syntagma* accepted only the final solution, i.e. a *Novel* of the Emperors Herakleios and his son Constantine III (7th century), ordering "that neither civil nor military official may try the bishop, or the cleric or the monk, either for civil or criminal actions; only their bishops, Metropolitans or Patriarchs may judge" (Ἄλλὰ καὶ ἡ τῶν βασιλέων Ἡρακλείου καὶ Κωνσταντίνου νεαρὰ, μήτε ἐπίσκοπον διορίζεται, μίτε κληρικὸν, μήτε μοναχὸν, χρηματικῆς ἢ ἐγκληματικῆς χάριν αἰτίας παρὰ πολιτικῷ ἢ στρατιωτικῷ ἀνάγεσθαι ἀρχοντι, ἀλλὰ παρὰ μόνοις τοῖς ἴδιοις ἐπισκόποις, ἢ μητροπολίταις, ἢ πατριάρχαις, Νῦν καὶ Ιρακλῖα καὶ Κονσταντίνη Νοβαΐα νι καὶ επίσκοπον πονελέβεατο νι καὶ πριγυπτίνικου, νι καὶ ινοκου ιμανία ραδι καὶ γρέχοντος ραδι νινη ῥτη γραδεκαγο καὶ ονιν' εκαγο καὶ σούδιμου βγτη κνεζά, νινη ῥτη ιεδινέχης σονης επίσκοπο καὶ μητροπολίτη καὶ πατριάρχη).³⁵ Which court shall be competent for mixed lawsuits, when one of the parties in judicial proceedings is a cleric and another a layman, the *Syntagma* solves according to the *Novel* of Emperor Alexios I Komnenos (Κομνηνός, 11th–12th centuries), which enacts the classical Roman rule *actor sequitur forum rei*, i.e. the plaintiff follows the forum of the property in suit, or the forum of the defendant's residence ('Η δὲ τοῦ Βασιλέως Ἀλεξίου, Εἴ μερισμὸς, φησὶ, ἐν τοῖς διαμαχομένοις ἔστι, καὶ ὁ μὲν τῆς κοσμικῆς φαίνεται καταστάσεως, ὁ δὲ τῷ θείῳ κλήρῳ ἐγκατείλεκται, ὁ ἐνάγων τηνικαῦτα τῷ φόρῳ τοῦ ἐναγομένου ἐκ παντὸς ὑποκείσεται, καὶ ἔκαστος εἰς τὸ πρόσφορον ἀπελεύσεται δικαστήριον, Ταρα καὶ Αλεκσία, αἴστη γαζδ, θλενίε, ρεγε, βι καὶ σούδεστης σε βούδετη, ινε ουγο μηρικαγο ιεστη ουγροκενη, ονε καὶ βογκεστημου πριγ' του συγετανη ιεστη, ποζιβαιει τογδα σταρβιшиη ποζиваεмомоу в' сауъскы подлежитъ и къждо въ прикладнои iemoy идеть соудилиште).³⁶ As this way a cleric could be judged by a temporal court, Church institutions demanded that the fines, pronounced to the clergy, belong to the Church, as the Htetovo monastery chrysobull orders

34 Ed. Ralles and Potles, pp. 213–233; ed. Novaković, pp. 224–245.

35 Ed. Ralles and Potles, p. 219; ed. Novaković, p. 229.

36 Ed. Ralles and Potles, p. 219; ed. Novaković, pp. 229–230.

(1343): “And if there is any fine that Church or hegoumenos must pay, all that shall be taken by the Holy Church” (И аще се оучини глоба и на самон цркви, рек'ше на игоуменѣ то все да оузима светата цркви).³⁷

However, lawsuits between the Church and worldly lords touching land were disputed before an inferior State court, but the final decision was made by the Tsar, as article 78, entitled “Of the land and people of the Church” (О земли црковной), orders: “If the Church has an action with any man touching land or Church people, or one shows a deed of gift and says: ‘I will produce the executor’,³⁸ then let no heed be paid either to the deed or to the executor, but the case shall be tried by the law of my majesty and let the appeal be to my majesty” (О земли, и в людех црковных. що имаю съ нимъ соудъ црковныи; а кто изнесе милостнъ книгоу; а или рече милостника имамъ; оу тошизъ книзе и оу тошмени милостникъ ница да не есть; развѣ да се соудъ по закону царства ми; нъ вину да оупросе царство міи).³⁹

Dušan’s Law Code in articles 4 and 12 confirmed privileges that the ecclesiastical court had in jurisdiction over the clergy and the whole population for so-called “spiritual duties”.

Article 4 is entitled “Of the spiritual law” (О духовномъ законѣ) and runs as follows:

And as his spiritual duty, every man must show obedience and submission to his archpriest. And if any man sin before the Church or transgress any of these laws willingly or unwillingly, let him submit himself and give satisfaction to the Church: and if he listens not and disobeys and submits not to the orders of the Church, then let him be separated from the Church.

И за духовны дльгъ въсакъ чловѣкъ да имать повиновѣнїе и послушанїе къ своемъ архіероу; ако ли се кто вбрѣте съгрѣшивъ цркви, или прѣсто-

³⁷ Edited by M. Koprivica, *ssA* 13 (2014), p. 150.

³⁸ The Serbian word is *milostnik* (*милостник*), derived from *milost* (*милост*), lit. grace. Burr translated *milostnik* as “almoner” (p. 213), but an almoner is an official who distributes alms and charity, money and help to the poor (A.S. Hornby, with the assistance of A.P. Cowie and J. Windsor Lewis, *Oxford Advanced Learner’s Dictionary of Current English* [London 1975], p. 24; *Webster’s New Universal Unabridged Dictionary*, under the general supervision of Jean L. McKechnie [New York 1979], p. 50). The Serbian *milosnik* was an executor of a certain legal activity or a guarantee that some legal procedure or decision would be carried out (see Chapter 9, section 2.5).

³⁹ Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, p. 62; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

упивъ что любо ѿт сїега законика, волим или не хотѣніемъ, да се повине и исправи се цркви; ако ли прѣчюе и оудрьжи се ѿт цркви, не вѣсочи исправити повелѣнїа цркви, потымъ да се отлоучи ѿт цркви.⁴⁰

The article explains jurisdiction of ecclesiastical courts concerning *duhovni dlj* (“spiritual duty”). *Duhovni dlj* denotes any duty of the faithful towards the Church, i.e. excercise of duties that members of Christian flocks have. If someone transgresses any of these “duties”, the archpriest has the right to punish, using spiritual sentences. Article 4 anticipates two different cases: 1) if a layman committed a crime against the Church, i.e. against the rules of canon law, written in “The Laws of Holy Fathers” (*Syntagma* and *Nomokanon*); and 2) if a layman transgressed provisions of the Code, referring to ecclesiastical matters. Such a sinner must repent and regret and be punished by *epitimion*—the appropriate penance for a spiritual offence.

Article 12, entitled “Of spiritual affairs” (Ѡ дѹховномъ дльгѹ), reads: “And laymen shall not judge clerical matters. And should any layman judge an ecclesiastical matter, let him pay 300 perpers. Only the Church shall judge [ecclesiastical matters]” (И дѹховномъ дльгѹ кѹмци да не сѧдѣ; кто ли се наидѣ ѿт кѹмикъ соудивъ црковномъ дльгоу, да плати .т. перпера; тъкъ мѹ црковъ да соуди).⁴¹ The influence of ecclesiastics in the Council that promulgated the Code is here seen, protecting their privileges of exemption from the civil courts. The word translated as laymen is *kozmici*, from Greek κѹмикъ, worldly as opposed to spiritual men (from κѹмос = world). A fine of 300 perpers was very high and would have been a heavy burden for any perpetrator.

2.2 Ecclesiastical Courts over the Rest of the People or Laity

Ecclesiastical courts in mediaeval Serbia tried laymen as well, either *ratione materiae*, by reason of the matter involved, or *ratione personae*, by reason of the person concerned.

2.2.1 Jurisdiction *ratione materiae*

Ecclesiastical courts tried all Greek Orthodox believers for all crimes against the Church and religion. For other crimes, already punished by civil courts, the Church inflicted upon perpetrators different types of *epitimions* (to fast, to bow low to the ground, to say prayers at home), as additional penalty. If a delinquent

⁴⁰ Burr, “The Code of Stephan Dušan”, p. 199; Novaković, *Zakonik*, p. 9; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

⁴¹ Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, p. 16; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

layman refused to accept any type of *epitimion*, the Church could pronounce the ultimate sanction—excommunication (ἀφορισμός, *odlučenje*, *отглочение*, *segregatio*, *excommunicatio*).

Since marriage in the Eastern Orthodox Church became a holy mystery or sacrament,⁴² all pleas referring to lawful marriage, divorce, dissolution of marriage and adultery were subject to the jurisdiction of ecclesiastical courts. Crimes against canon rules and secular laws concerning marriage were also in the jurisdiction of the Church.

As many persons in the Middle Ages bequeathed a part of their property to the Church or monasteries, the legal operation expressed by the formulas “given for the soul” or “given for the grave”, a will (*testamentum*) began to be considered as a pious, religious act, and the Church aspired that all lawsuits concerning wills would come within the competence of ecclesiastical courts.

The jurisdiction of ecclesiastical courts over all believers *ratione materiae* was recognized in mediaeval Serbia as well, but we do not dispose with surviving rulings, and we cannot conclude exactly how ecclesiastical courts functioned.

2.2.2 Jurisdiction *ratione personae*

Ecclesiastical courts tried certain categories of people who were under the special protection of the Church, such as widows, orphans, beggars, sick people and the freemade. Already the Hilandar *Typicon* orders that the monastery must give shelter to alien and helpless persons (стран'нымъ и немоющимъ оупо-коjenie). For that reason, it notes that there should be established a hospital with skilled sick attendants in the monastery (заповѣдаю' же избрать бол'-нимъ келию, въ швадѣ добра спѣвѣ бол'нициу и шдрое поставити. болнымъ на вѣзлѣженіе и на покойце, и работника имъ давати, яко симъ работати всѣмъ).⁴³ Tsar Dušan's general chrysobull to Hilandar monastery (1348) says: “And My Imperial Majesty established inside the monastery hospital, to be a refuge for the sick and harmless” (И оучини царство ми въноутрь оу монастыри болнициу да ѿсть покойце болнимъ и недоужнымъ).⁴⁴ The Saint Archangels' chrysobull

⁴² The Catholic Church, Hussite Church, and Old Catholic Church recognize seven sacraments: Baptism, Reconciliation (Penance or Confession), Eucharist (or Holy Communion), Confirmation, Marriage (Matrimony), Holy Orders, and Anointing of the Sick (Extreme Unction). The Eastern Orthodox Church and Oriental Orthodox Church also believe that there are seven major sacraments, but apply the corresponding Greek word μυστήριον (*mysterion*), also to rites that in the Western tradition are called sacramentals and to other realities, such as the Church itself.

⁴³ Chapter 38 and 40, ed. Jovanović, pp. 112 and 116.

⁴⁴ Edited by Mišić and Koprivica, *ssa* 14 (2015), p. 69.

confirms that Tsar Dušan endowed a hospital in the monastery (иже јесть приложило било царство ми болници и съ дворми). A few lines further we read an order: “And for the hospital, let it be as the King enacted, with 12 beds; who falls ill let him stay in hospital, but not the lame and blind” (А за болнициу како је оузајонија крал такози да стои .ві. шдря, и кто се разболи да је оу болници, а хромца и слепца да нїб).⁴⁵ The charter makes a difference between medical treatment and custody of lame and blind persons. Lame and blind persons could not stay in hospitals, but some sources testify that the Church took good care of them. For example, Tsar Stefan Dušan’s and King Stefan Uroš’s charters to Jacob, Metropolitan of Serres (1352–1353), mentions among the Church people a certain “Hrousse, blind man” (А се людие црксовны је Хроусе слеп’цъ).⁴⁶ Finally, article 28 of the Code, entitled “Of feeding the poor” (О хране оубогымъ), orders: “And in all churches the poor shall be fed as is written by their founders” (И по въсех црквахъ да се хране оубозин, како јесть описано ут ктиторъ).⁴⁷ All those wards of the Church were under the jurisdiction of ecclesiastical courts.

3 City Courts

As we have already noted, the urban population in mediaeval Serbia did not represent a unique, autonomous class (*tiers état*), as was the case in Occidental European monarchies. However, some elements of autonomy were present, especially in the court system and trial procedure.

3.1 Kotor

In the city of Kotor there existed two courts: *Curia parva* (“Petty Court”) and *Curia*. However, *Curia parva* was not a court of first instance and *Curia* an appellate court (a court having jurisdiction of appeal). *Curia parva* administered justice for petty offences, minor crimes, the maximum punishment for which was a fine of 10 perpers. *Curia* administered justice for major crimes, punishable with fines higher than 10 perpers. As appeal was allowed only for cases to the value of more than 50 perpers, sentences of *Curia parva* and *Curia* for minor crimes (up to 50 perpers) were legally valid without any legal redresses

⁴⁵ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, pp. 90 and 112.

⁴⁶ Edited by G. Bojković, *SSA* 15 (2016), p. 94.

⁴⁷ Burr, “The Code of Stephan Dušan”, p. 203; Novaković, *Zakonik*, p. 27; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

(*A sententia vero data usque ad summam quinquaginta yperperorum, vel valoris inde infra nemo valeat appellare*).⁴⁸

Curia parva consisted of three judges, elected from the nobility for six months (*quod de sex in sex mensibus, secundum statutum elegantur tres Nobiles, Iudices parvae Curiae*).⁴⁹ They did not have a fixed monthly salary, but they got from litigants so-called *aptagias* (*Qui Iudices habeant a partibus litigantibus, secundum consuetudinem aptagias*).⁵⁰ *Curia parva* tried all citizens of Kotor and all strangers, except Serbs, Albanians and Vlachs who lived in the town-district. They had their own judges, so-called *Comites Sclavorum*.

In 1400, *Curia parva* was dissolved and its jurisdiction transferred to the Prince (*Comes*) and judges of *Curia*. Each of them could administer justice individually.

Curia was made up to the Prince (*Comes*) and three judges. The Prince took an oath that declared that he would, *inter alia*, administer justice equally to all, great and small (*iustitiam aequaliter maioribus et minoribus tribuam manuteneam*).⁵¹ The Prince could pronounce sentences with one of the judges up to the value of 25 perpers. The Statute calls judges *iudices annuarii*, because their term of office was one year. The judges were not educated lawyers but ordinary people. However, all their decisions had to be promulgated in accordance with the Statute regulations (*ac omnibus faciant et reddant iustitiae complementum, secundum formam Statutorum nostrorum*).⁵² Judges swore an oath that they would try without fraud, according to the Statute and customs (*iudicabo sine fraude secundum Statutum Civitatis Cathari, et consuetutinem*).⁵³

Judges had to try in court on Mondays and Saturdays, but if they wanted they could administer justice on any other day, and litigants had to appear at court (*Volumus quod Iudices qui pro tempore fuerint, teneantur sedere, et iudicare omni die Lunae, et omni die Sabbati ... si necesse fuerit, et si in diebus aliis iudicare voluerit, omnes respondere teneantur*). Court actions concerning sales and all offences had to be tried every day when judges were in the city and to be terminated within three months (*et omnibus aliis diebus cum in Civitate fuerint iudicent de venditis, et omnibus maleficiis, et teneantur non prolongare senten-*

⁴⁸ Cap. cccxc, *De iudicis et appellationibus, Statut grada Kotora (Statuta civitatis Cathari)*, vol. I, p. 220.

⁴⁹ Cap. xiii, *De electione et officio Curiae parvae, Staut grada Kotora*, vol. I, p. 9.

⁵⁰ Ibid., p. 10. *Aptazi* is an old notarial term from Dubrovnik, a kind of obligation with a designation of debt money. See Skok, *Etimologiski rječnik*, vol. I, p. 49.

⁵¹ Cap. xxvi, *De sacramento comitis, Statut grada Kotora*, vol. I, p. 15.

⁵² Cap. I, *Statut grada Kotora*, vol. I, p. 2.

⁵³ Cap. xxvii, *De sacramento Iudicis, Statut grada Kotora*, vol. I, p. 16.

*tias ultra tres menses).*⁵⁴ From 1 August to Saint Michael's Day (29 September) there were no trials (*Statuimus quod a primo die mensis Augusti usque ad festum Sancti Michaelis nulla quaestio per aliquem coram Iudicibus iuratis fiat*).⁵⁵ The court vacation was fixed on that term because of summer heat, but also because of harvest-time and vintage. Initially, judges were not paid, and it seems that abuses of office became very common (*Quia multa, et enormia damna sustinebamus propter negligentiam Iudicium iuratorum*), although judges swore that they would not take bribes. Later on judges got salaries: first 12 and than 25 perpers.⁵⁶ All other incomes from lawsuits judges had to deliver to the treasurers of the Commune (*omnes introitus provenientes eis de Curia, vel de iudicio sui temporis, sint Comunitatis; quos introitus ipsi Iudices teneantur extrahere, et assignare Camerarii Comunitatis*). If they refused to do that, they had to pay the Commune from their own property and an additional fine of 25 perpers (*quod si non fecerint, de suo proprio Comunitati solvere teneantur; et etiam de poena solvant Comunitati yperperos vigintiquinque*). Exceptionally, they could take one *groschen* from the promulgation of sentences and one perper from court stamp-taxes (*excepto quod habeant unum grossum pro carta sententiae danda, et yperperum unum de contumacia, et refutatione Curiae*).⁵⁷

At every lawsuit, a notary was present together with the judges (*volumus et ordinemus ... quod Notarius sedeat cum Iudicibus omnibus diebus iudicadi*). His task was to examine the laws, read documents and take a note of statutory provisions and lawsuits (*ad audiendum legas, et cartas legendas, et statuta et questiones scribendas*). From every sentence the notary had one *groschen* (*de omni carta sententiae habeat idem Notarius unum grossum*).⁵⁸

The place where the trial was held (venue) was always out of doors—usually Saint Tryphon's Place (*in platea s. Triphonis*) or the Coastal Place (*super plateam Marinae*). The only court mark was a bench—a long seat of wood where judges and notaries sat during the trial (*sedere ad banchum*). A bench was usually placed under a porch (*sub lobia*). If necessary, judges went out of town (in the district) and pronounced sentences on the spot.

⁵⁴ Cap. XLVI, *De tempore iudicandi a Iudicibus, Statut grada Kotora*, vol. I, p. 30.

⁵⁵ Cap. XLIX, *De legibus non habendis mense Augusti assiduantibus usque ad festum Sancti Michaelis, Statut grada Kotora*, vol. I, p. 31.

⁵⁶ In the printed version of the Statute a salary of 25 perpers was mentioned in Chapter I (p. 2), and a salary of 12 perpers in Chapter LI, *De salario Iudicium* (p. 32). So, older provisions were printed behind younger, which is hard to explain.

⁵⁷ Cap. CI, *De salario Iudicium, Statut grada Kotora*, vol. I, pp. 32–33.

⁵⁸ Cap. XLVII, *De Notario quod sedeat cum Iudicibus, Statut grada Kotora*, vol. I, p. 30.

If any citizen of Kotor asked for legal protection from the Serbian King, the Commune would consider that as a rude violation of City autonomy. According to the decision of the legislative Council promulgated in 1301,

if any of our citizens wanted to do something with the Sovereign Lord [i.e. Serbian King], by force and against the provisions, liberties and honour of our City, and the fine [from that lawsuit] would belong to the King, with or without deed, or charter,⁵⁹ let him pay a penalty and fine of 50 perpers. And to the person, against whom he brought the deed or charter from the Sovereign Lord ... let him pay another 500 perpers and all damage and expenses. And if he cannot not pay the fine and damage, let him be banished from the City.⁶⁰

quod si aliquis ex nostris civibus presumeret facere aliqua cum Dominatione, per quae poena aliqua cadat Dominationi, cum carta, vel sine carta, seu povella, quae a Dominatione portata fuerit, vel per vim propriam contra ordinationem, libertatem, et honore civitatis nostrae, solvat de pena et de bando Communitatii nostre yperperos 50. Et illi super quem povellam, seu cartam a Dominatione portaverit ... solvat alios quingentos yperperos, et omne damnum, et expensas et si poenam, et damnum praedictum unde solveret non haberet, in posterum sit forbanditus de civitate.

3.2 Budva

In Budva there existed a board of three judges (*giudici*) who were public servants with great power and reputation. Their task was to put into practice statutory provisions promulgated by the city authorities. As executive and judicial power in Budva were not separated, judges attended to administrative business as well. They made suggestions for different decisions of the Great and Small Council. In their jurisdiction was inspection over city revenues and expenses, but they had the help of eight councillors (*consiglieri*).⁶¹ However, it is not clear whether judicial council consisted of two or three judges. The Statute provides only that cases to the value of 2 perpers may be disputed by a single person (only one judge).⁶²

⁵⁹ The text used the Slavic word *povella* (*povelja, noseča*) = charter.

⁶⁰ Cap. CCCXLIX, *De cartis, et povellis adductis a Dominatione contra consuetudinem Civitatis, Statut gradia Kotora*, pp. 189–190. Cf. Sindik, *Komunalno uređenje Kotora*, pp. 109–112.

⁶¹ Cap. 82, 123.

⁶² Cap. 75, 94, 109, 280.

However, under the rule of the Republic of Venice, the executive and judicial power of judges declined. They administered justice only in civil trials, while criminal trial procedure was under the jurisdiction of a mayor (*podestà*).

When Budva was part of the Serbian mediaeval State, it retained judicial autonomy. Tsar Dušan confirmed those rights of the city in the Statute. However, from the jurisdiction of Budva's court were excepted the crimes of treason (*infedeltade*), homicide (*homicidio*), trespasses concerning slaves, male and female (*de servo et de serva*) and horses, stolen or dead (*de cavallo rubbato o morto*).⁶³ Those crimes were in the jurisdiction of the Imperial (Serbian) Court. Budva's judges could not try clerics, heretics, monks, usurers or husband and wife in their lawsuits concerning dowry. All those cases were under the jurisdiction of the bishop and his vicars.⁶⁴ This provision was partly abolished in the epoch of the Despotate: clerics could be summoned to appear in court, except in the case of a crime (*maleficio*) or when "Church reasons" (*ragioni della chiesa*) were against a summons.⁶⁵

The venue was always out of doors, but we do not know where. A document from the epoch of Venetian domination testifies that judges were sitting "on the bench for judgment" (*alla banca per giudicare*), under the "loggia of Barbakan". We can suppose that such a practice existed earlier as well.⁶⁶

3.3 Novo Brdo

According to the provisions of the Law of Mines, regulating the legal status of German miners (so-called *Sasi*, i.e. Saxons) living and working in Novo Brdo, the most important mine-city in mediaeval Serbia, three types of courts existed in the town.

⁶³ Cap. 3. A similar provision is contained in the Statute of Skadar (*Statuta Scodrae*) in Chapter II (*Capitulo II, De casi che de' zudegar lo re*, ed. Bogojević-Gluščević, p. 107): *Deba saper ciaschun che miser lo re d'ognu caso che venissi in citade concedi a li zudesi de zudegar, come a citadino, a Sciavo, a Arbanese et ciaschun stranier d'ognu cosà, salvo de quattro cose, cioè imprimamente de infedelitate, de homicidio, de servo et de ancilla, de cavallo et de questi cosi de' zudegar miser lo re stesso.*

⁶⁴ Cap. 128. According to Chapter cxxxxiiii of the Statute of Skadar (*Capitulo cxxxxiiii, De costion clericu cum laico*, ed. Bogojević-Gluščević, pp. 155–156), lawsuits between clerics and laymen should be tried by bishop and judges, and if the bishop was absent he could be replaced by a vicar (*Ordinemo si alcun laico avesse alguna custione cum clericu, vulemo qui quella costione la debia zudegar lo viscovo cum li zudesi secondo lo Statuto e li usanzi de la nostra citade ... E si lo vescovo non fosse, chi se faza cu li vicarii*). However, The Statute of Skadar, written in mediaeval Italian, cannot be strictly considered as a source of Serbian mediaeval law, so we do not describe it under a separate title.

⁶⁵ Cap. 256. Cf. Bujuklić, *Pravno uređenje srednjovekovne Budvanske komune*, pp. 58–59.

⁶⁶ Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, p. 240.

Article 6 of the Law of Mines has the title “On the law of smeltery and miner’s hole” (О колском законѣ и рѣгнѣ).⁶⁷ Further in the text we read that lawsuits in smeltery (Цѣ соуть колскы соудови), referring to coal (за оуглѣвье), ore (за рѣдѣ), workers in a smeltery (за смѣачаре, за оупкапаре, и за чистилце за конюхѣ),⁶⁸ transportation of load (за фѣрове)⁶⁹ and ground (за грѣнте)⁷⁰ were under the jurisdiction of the “Court of the Customs Officer” (соуд царинички).⁷¹ Customs officers in mediaeval Serbia were private persons, mostly Ragusans (Dubrovčani) who took leases of duty collection and mines as tenancy for a number of years. Ragusans were not subjects of the Serbian monarchs, and they had their own courts that tried them, although they were living in the territory of Serbia for a long time. As foreigners, could Ragusans administer justice in Serbia, even for petty offences? In our opinion it is hard to believe, because the same article 6, a few lines later, mentions a “court of miner’s hole”, where the judges were customs officers and so-called *urbarari*;⁷² they judged for petty

67 Ed. Radojčić, *Zakon o rudnicima*, p. 52. For smeltery the Law of Mines uses the word *kolo* (коло) = *rhombus, machina rei metallicae, der Haspel, das Haspelrad* (Radojčić, p. 76). In modern Serbian and Croatian *kolo* means wheel dance, wheel, circle, round, ring and series (of books), while the word for smeltery is *topionica* (*монуоница*). For a miner’s hole (opening) the Law of Mines uses the word *rupa* (рѹпа), which in modern Serbian means hole, gap. But in our text *rupa* is *foramen*, an artificial hole, made by drilling and digging, not *specus*, i.e. a natural hole (Radojčić, p. 82).

68 The Law of Mines mentions four types of workers in smeltery whose appellations are very hard to translate: 1) *smiačar*, смѣачарь, mediaeval German *sm lzer, schmelzer*, a worker who puts ore in a furnace to be melted, who takes care of the furnace’s working order and repairs it; 2) *upkapar*, оупкапаръ, a worker in a smeltery who received ore and transported it to the furnace; 3) *čistilac*, чистилацъ, a worker in a smeltery whose task was to set apart silver from lead; 4) *konjuh*, конюхъ, *equiso*, a worker who took care of horses (Radojčić, *Zakon o rudnicima*, pp. 82, 84, 88 and 76; Marković, *Zakon o rudnicima*, p. 21).

69 *Fur, фѣрь*, German *der Fuhr, die Fuhere*, Latin *itio, vectio* (Radojčić, *Zakon o rudnicima*, p. 86).

70 *Grunt, грѣнть*, mediaeval German *Grunt*, used even today in northern regions of Serbia, which were up to 1918 parts of the Austro-Hungarian monarchy. The Serbian word is *zemljiste* (*земљишуме*). It is not clear what *Grunt* means in this context.

71 It is not clear whether this was an official name of this court. Biljana Marković (*Zakon o rudnicima*, p. 51) suggested this appellation, because it was used in the text of article vi. However, Mehmed Begović in his paper “O nadležnosti rudarskih sudova po Zakonu o rudnicima despota Stefana Lazarevića i turškim rudarskim zakonima xv i xvi veka” [“On the Jurisdiction of Miner’s Courts according to the Law of Mines of Despot Stefan Lazarević and Turkish Laws of Mines from the 15th and 16th Centuries”], *Spomenica SANU* 30 (1967), p. 11, calls this court *Kolski sud* (smeltery court), according to the title of article vi and its first sentence.

72 *Urbarar, оупкапаръ, urbararius*, was a State official who gave concessions for the working

offences, while major crimes were tried in council,⁷³ according to the law (А цио је рѣпни соудъ да соуде цариници и оурварари цио соу мале работе и дробни соудовы, а цио је за д'блове и за ине гољеме работе да идој цариници и оурварари да имъ соуде съборно по закону).⁷⁴ However, it seems that customs officers in Serbia were not always private persons, but sometimes civil servants too. This is clear from the oath of Ragusan Doge Johannes Dandulus, confirming his friendship to Serbian King Stefan Vladislav (1234–1235), where we read: “And your [King Vladislav's] customs officer shall stay with us” (И цариникъ твои да стои Ѹ нась).⁷⁵ Article 120 of Dušan's Law Code mentions “an Imperial customs officer” (цариникъ царевъ)⁷⁶ who was, beyond any doubt, the Tsar's servant and not a private person. So, it is quite possible that judges of the so-called “Court of the Customs Officer” were State officials (customs officers and *urbarari*) and not private persons (lessees or tenants of customs). However, it is not clear whether the customs officer (*carinik*) and *urbarar* administered justice together (collegially) or individually nor do we know what the jurisdiction of each of them was.

Article 4, entitled “On the Court of the Duke and Count” (О сѹдѣ воєводѣ и кнѧзѧ), orders: “The Duke and Count can try cases that have a value of one liter, and for hereditary estates and for a great matter, the Count with protopop and Duke and respectable citizens⁷⁷ and “good men”⁷⁸ who are living in the city shall try in the Council” (Воєвода и кнѧзь да соу волни соудити цио је вреđно, а.

of a mine and collected so-called *urbor* (оурворъ), a tax that had to be given to the State for the extraction of ore (Marković, *Zakon o rudnicima*, p. 14).

73 It is not clear what type of council this would be. According to Mehmed Begović (“O nadležnosti rudarskih sudova”, p. 12), it was a town-council, that beside executive power had judicial power as well.

74 Radočić, *Zakon o rudnicima*, p. 52.

75 Mošin, Ćirković, and Sindik, *Zbornik*, p. 135. Cf. Ivanović, *Prilozi za istoriju carina u srednjovekovnim srpskim državama*, p. 29.

76 Burr, “The Code of Stephan Dušan”, p. 520; Novaković, *Zakonik*, p. 92; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

77 The original word is *purgari*, from mediaeval German *burgaere, bewohner einer burc, bürge*. Radočić, *Zakon o rudnicima*, p. 82.

78 Serbian “dobi ljudi” (“добри људи”), *boni homines*, “good men”: in old European law a name given to the tenants of a lord, who judged each other in the lord's court. On the meaning of the term *boni homines* in the Law of Mines, see M. Ivanović, “Dobili ljudi Novobrđskog Zakonika despota Stefana Lazarevića” [“*Boni homines* of Despot Stefan Lazarević's Law of Mines from Novo Brdo”], *IČ* 44 (2015), pp. 159–187. On *boni homines* in mediaeval Serbia, see M. Ivanović, “*Dobili ljudi* u srpskoj srednjovekovnoj državi” [“Good Men” in the Serbian Mediaeval State] (Belgrade 2017), and Đ. Bubalo “*Dobili ljudi*”, in *LSSV*, pp. 161–162.

литѣ а що є за бацине и за ине големе работе да иде кнезъ с протопопиим кон воеводѣ и с поургари и добри люди кои се находѣ оу мѣстѣ да соудѣ съворно).⁷⁹ As we can see, the Duke (*voevode*)⁸⁰ and Count (*Knez, Comes*)⁸¹ could administer justice for petty cases, and it is possible that they tried individually. “Great things” (*goleme rabote*) were tried by a body consisting of Duke, Count, protopop, 12 citizens and a jury, with an indeterminate number of jurors.

Article 5 mentions an “Ecclesiastical Court” (Црквении соудъ), ordering: “In the ecclesiastical court, the protopop shall summon priests to judge justly, according to the law, and nobody can interfere” (Що є соудъ црквении протопопа да съзове поповѣ да соудѣ по закону право за тои да не има нитко ниеднога посла).⁸² Like article 12 of Dušan’s Law Code, the Law of Mines protects the ecclesiastics’ privilege of exemption from the civil courts. As German miners were Roman Catholics, within their right to confess their religion was the privilege to have Roman Catholic ecclesiastical courts.

3.4 *Towns Conquered from Byzantium*

In the large territory of the Byzantine Empire which became a part of the Serbian State of Tsar Stefan Dušan were located a number of Byzantine cities. Their urban rights were confirmed in article 124 of the Code, but for judicial autonomy the most important is article 176:

All towns which are in my dominion shall be in relation to the law in all things as they were in the days of the first Tsars. For suits which citizens have between themselves, let them be judged before the prefects of the towns. Or before the Church courts. And if a man from the country have a case with a citizen let him sue before the prefect of the town and before the Church and the clergy. According to the law.

79 Radojčić, *Zakon o rudnicima*, p. 52.

80 Dukes (*voevode*) were military commanders in mediaeval Serbia. According to article 129 of Dušan’s Law Code they “have authority even as the Tsar himself”, and they could judge in the army. During the reign of Despot Stefan Lazarević, *voevode* were at the head of the new administrative areas called “vlasti” (regions).

81 It is not clear who come under the definition of Count (*Knez, Comes*) as mentioned in article iv: an official appointed by the Despot or Saxon’s Count, i.e. the miners’ superior elected among German workers (so-called *Sasi*), as Biljana Marković suggests (*Zakon o rudnicima*, p. 55). King Dragutin’s charter presented to the Ragusan merchants (1277–1281), mentions the Saxon’s Count *Prebegar* (Предбагар, *Comes Freibergerius*) who was the miners’ superior in the city of Brskovo (actuel Mojkovac in Montenegro). Mošin, Ćirković, and Sindik, *Zbornik*, p. 274.

82 Radojčić, *Zakon o rudnicima*, p. 52.

Градове въси по земли царства ми, да съ на законѣ въсѣмъ како съ били отъ прѣвыхъ царь; а за соудове що имаю мегю собомъ, да се соуде прѣдъ влададлци градъскими, и прѣдъ црковными клиросомъ, а ктго жоуплатанинъ при гражданина, да га при прѣдъ влададлцемъ градъскимъ, и прѣдъ црквомъ, и прѣдъ клиросомъ по закону.⁸³

The wording of article 176 is not quite clear: the beginning of the first sentence amplifies the confirmation of the urban rights of all towns in the Empire. However, further on the text says “shall be in relation to the law in all things as they were in the days of the first Tsars”. The “first Tsars” (Emperors) could denote only Byzantine Emperors, Dušan’s predecessors in the conquered regions. According to that, the provisions of article 176 refer to Greek (Byzantine) towns, confirming them judicial autonomy that existed during the reign of Byzantium. It then proceeds to give judicial power to secular officials, here called *vladalci*,⁸⁴ and to the ecclesiastical authorities.

Among the Byzantine towns which became part of Dušan’s State, Serres assumed the most important position as a political as well as ecclesiastical centre, because of its metropolitan rank. Examination of judicial documents from Serres, issued between 1348 and 1388, confirms the existence of a mixed city-court, composed of ecclesiastical and secular officials, as prescribed in article 176 of the Code. Members of the clergy constituting the court were the following: 1) *oikonomos* (οἰκνόμος), whose duty was the management and disposition of Church property; 2) *sakellarios* (σακελλάριος), the official in charge of the finance of the metropolitan and episcopal seats; 3) *skeuophylax* (σκευοφύλαξ), who was in charge of the ecclesiastical furniture, liturgical books, precious objects, relics, etc.; 4) *chartophylax* (χαρτοφύλαξ), who composed, signed and sealed episcopal decisions, heard confessions and granted absolution, and issued or withdrew marriage permits; 5) *sakellios* (σακελλίου), who was in charge of Church movable property and renting of the ecclesiastical lands; and 6) *protekdkos* (πρωτέκδικος) or *dikaios* (δικαῖος), the legal representatives. Among temporal officials, members of the court were always *kephale* or *ex-kephale*. Two of them, whose signatures were found on one of the surviving documents, were jurists who held the post of “Universal Judges of the Romans” (οἱ καθολικοὶ κριταὶ τῶν Ῥωμαίων). The “Universal Judges of the Romans” were a supreme court in Constantinople, Thessaloniki and some

⁸³ Burr, “The Code of Stephan Dušan”, p. 534; Novaković, *Zakonik*, pp. 137–138; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

⁸⁴ *Vladalci* was the general name used for court dignitaries but also for the *kephale* (prefect of the town) and headman of a village. See Chapter 9, note 116.

other parts of the State, created as a result of the judicial reform of Emperor Andronikos III Palaiologos in 1329. There was no appeal from its decisions.⁸⁵ It seems that the institution of “Universal Judges of the Romans” was created in Serres after Dušan’s Empire vanished and the town became the centre of a separate State under the rule of Despot John Uglješa.⁸⁶

Beside Serres, such mixed courts existed in Zichna, Christopolis and Melnik and maybe in Skoplje, Prizren, Ochrid and Peć.⁸⁷

3.5 *Courts for Foreigners*

Foreigners living in Serbian cities and market-towns enjoyed some rights of power of self-government and judicial autonomy. However, on that type of autonomy we have no information in legal documents, except some general data on separate courts for Ragusan merchants and Saxon miners.⁸⁸

According to the Statute of Dubrovnik from 1272, it was forbidden to all Ragusans (Dubrovčani), residing in Serbia, to bring their mutual lawsuits to the Serbian court. They could appear in court only in Dubrovnik or administer justice to the Ragusan consuls.⁸⁹

According to our historical sources Ragusans had their consuls in Serbia already in the second half of the 13th century. There were two consuls: the *consul generalis* for the whole country and a consul appointed just for a single law case, with two assistants (*duo boni homines mercatores*, later called *iudices*). At the beginning, the consul dwelt in Brskovo (already by 1278) and later in Rudnik.⁹⁰ In 1311 there existed a separate consul for the territory of “Senior King” Stefan Dragutin. By the decision of the Republic of Ragusa from 17 October 1325 a permanent representative for the whole territory of Serbia was estab-

⁸⁵ On the Universal Judges of the Romans, see P. Lemerle, “Le juge général des Grecs et la réforme judiciaire d’Andronic III”, in *Mémorial Louis Petit* (Bucarest 1948), pp. 292–316.

⁸⁶ On this State, see Ostrogorski, *Serska oblast*.

⁸⁷ For more details see Solovjev, “Sudije i sud po gradovima Dušanove države”, and Živojinović, “Sudstvo u grčkim oblastima srpskog carstva”.

⁸⁸ On courts for Saxon miners see section 3, Novo Brdo.

⁸⁹ *Liber statutorum civitatis Ragusii*, *Liber IIII*, cap. LI, *Statut grada Dubrovnika*, p. 226.

⁹⁰ Rudnik (Serbian Cyrillic *Рудник*, meaning *mine*) is a mountain and village in central Serbia, near the town of Gornji Milanovac, about 100 km south from Belgrade. The mountain’s highest peak has an elevation of 1,132 metres above sea level, while the village has a population of 1,490 people. The rich mineral resources of the mountain (silver, lead and copper) were an important source of wealth to Serbian mediaeval rulers. Besides mining, Rudnik was a settlement with developed handicrafts and a thriving trading post with a cosmopolitan population that influenced the whole of Serbia. Even today, Rudnik is an important mining centre. By 2017, the lead and zinc mine “Rudnik” became one of the most successful mining companies in Serbia.

lished, called *consul mercatorum Ragusinorum, conversantium in Sclavonia*. He was appointed for one year with a salary of 400 perpers. He had no right to trade, and he had to be present always in any place where the Serbian King and his court engaged in. With the renewing of these provisions (8 March 1332) it was decided that the consul had to live in Prizren at the expense of Ragusan merchants from the whole of Serbia. His duty was to visit all big fairs (*omnes magnas fieras*) of the country and, according to the request of Ragusan merchants, travel to the King's Court. The consul had to visit all the market-towns of Serbia (*omnia mercata Sclavonie*) twice a year, where Ragusan traders stayed, and had to administer justice between his fellow-countrymen. In cases of major crimes he had to take advice from the Ragusan colony-merchants of Prizren. When Prizren lost its importance, the consul moved to Novo Brdo.⁹¹

Until the second half of the 14th century, Ragusan consuls tried according to the rules of customary law. However, on 17 December 1387, the Ragusan Great Council (Latin *Consilium Maius* or *Magnum*, Italian *Maggior Consiglio*, Croatian *Veliko Vijeće*, Serbian *Велико Веће*) promulgated a law regulating the election and jurisdiction of Ragusan consuls in Serbia, Bosnia, Sirmium and Bulgaria (*De ordinibus consulis eligendi pro iure redendo inter Raguseos in Sclavonia, Bossina, Sremia et Burgaria*). The consul administered justice together with two Ragusan noblemen, but in the absence of them with two respectable commoners (*popularis*). Ragusans residing in Serbia were not obliged to accept the consul's jurisdiction; if they preferred, they could go to court in Dubrovnik. However, any litigant who had accepted the consul's court had to accept its sentence. For the execution of rulings, as necessary, the consul could ask Serbian officials for help, for which he had to pay 10% from the pronounced amount.⁹²

Confirming the old Ragusan's privileges, Prince Lazar in the treaty from 9 January 1387 orders:

For lawsuits that Ragusans have among themselves, either litigation was in Serbia, or in Dubrovnik, legal proceedings shall be before the Ragusan consul and his judges, and every sentence that the consul and his judges deliver, let it be confirmed. If any Ragusan would not like to appear before that court, the consul and his judges could tie that person and hold him

⁹¹ Jireček, *Istorija Srba*, vol. II, pp. 179–180.

⁹² *Liber viridis*, cap. 63, edited by B. Nedeljković (Belgrade 1984), pp. 31–36. The so-called *Liber viridis* ("The Green Book", because of the cover's colour) was a collection of Ragusan laws promulgated between 28 February 1358 and 27 November 1460. It was followed by the *Liber croceus* ("The Yellow Book"), containing laws from 10 December 1460 to 26 January 1493 (edited by B. Nedeljković [Belgrade 1997]).

until he pays a pronounced amount. And that law may not be changed by neither a kephale nor any other official.

и цю се прѣ мегѹ словомъ Дѹбровчане или се вѹде Ѹчинило Ѹ Срьблихъ или Ѹ Дѹбровникѹ да се прѣд кѹньсѹлѡмъ Дѹбровъчкимъ и прѣд нихъ сѹдијами и цю сѹди кѹньсѹль и негове сѹдије на томъ да стое; ако ли ви не хтѹль Дѹбровчанинъ стојати на whомзи сѹда да је вольнь кѹньсѹль и негове сѹдије whоногаји свезати и дрѹжати до гдє плати Ѹ цю је исѹгень. а да тогаи закона нје вольнь потворити кефалија ни владаљци.⁹³

As we can see, the two documents from the same year have almost identical content.

4 So-called “Stanak” (*Stanicum*)

“Stanak” (*stanicum*) is an old legal term used among South Slavs with different meanings. It comes from the verb *stati se* (*sastati se*, in modern Serbian), meaning to meet, to come together, to have a meeting. In legal documents, *stanak* took on significance in three ways. First, and most important for our work, is the technical term denoting the mixed-court for lawsuits between Ragusans, their neighbouring countries (Serbia, Bosnia), and some towns in Dalmatia (Zadar, Šibenik, Trogir, Omiš, Split, today all in Croatia), Bay of Kotor and North Albania (so-called *Dalmacia Superior*, “Upper Dalmatia”). *Stanak* was, as well, the most common name used to refer to the assembly of nobility in mediaeval Bosnia, also known as the *Rusag* (from the Hungarian word *ország*, meaning country). Beside the mixed-court and assembly of nobility, *stanak* could also mean any meeting of two parties for the purpose of negotiations. The testimony for such a meaning of the word can be found in the will of magister Antonius de Monteflore (*Testamentum magistri Antonii de Monteflore*),⁹⁴ King Dušan’s physician, which was composed in January 1337.⁹⁵ The text mentions a debt of Nicholas Buće (Nicola de Buchia), King’s *protovestiarios* (πρωτοβεστιάριος), for some high-quality fabrics (*profrisis magnis et subtilibus*), which were delivered “when we were in a meeting [*stanak*] with the Emperor of Byzantium” (*quando*

⁹³ Edited by Mladenović, A., *Povelje kneza Lazara*, p. 193.

⁹⁴ Monteflore, modern Montefiore dell’Aso, is a *comune* (municipality) in the Province of Ascoli Piceno in the Italian region of Marche, located about 70 km southeast of Ancona.

⁹⁵ The document was edited by M. Dinić, in “Krstasti groševi” [“Crossed Groschen”], *ZRVI* 1 (1952), pp. 109–111.

*fuimus ad stanicum cum imperatore Romanie).*⁹⁶ However, we shall examine the word *stanak* only in the sense of the mixed border-court for lawsuits between Serbs and Ragusans.

The border-court for litigations between Serbs and Ragusans was already mentioned in the oldest treaties of Serbian monarchs with Dubrovnik (without using the word *stanak*), and the Statute of the Republic of Ragusa calls it *antiqua consuetudo*. Taking an oath to Ragusan Doge Gervasius (Krvaš), Miroslav, the Prince of Hum and brother of Stefan Nemanja, promised (17 June 1190) that “he shall administer justice to Ragusans, without fraud, with judges elected by both sides, that shall establish justice, according to the old customs” (*Tamen et nunc ipse iustitiam faciat Raguseis sine fraude electis ex utraque parte iudicibus, ante quorum presentiam iustitia secundum antiquorum mores finiatur*).⁹⁷ In the oath of Great Župan Stefan Nemanjić to the Ragusans (1214–1217), *inter alia* we read: “It is forbidden to the Serb to capture a Vlach [i.e. Ragusan] with no trial. And if someone commits a crime, either from the City [i.e. Dubrovnik] or from my country [i.e. Serbia], judges shall assemble where the law has prescribed, and they shall look for a solution” (И да не јаме Србљинъ Влахъ безъ суда; нъ ако се ључини кривина мего градомъ и монвъ земловъ, да се стаю съдне гдє є Ѣаконъ, и да се исправлѧю; *Et ut Sclauus non apprehendat Raguseum sine iudicio, sed si factum fuerit iniustum inter ciuitatem Ragusii et terram meam ponant se iudices, ubi est consuetudo, et iudicent*).⁹⁸ The court, “according to the old law, from Saint Michael’s Day to Saint George’s Day” (И да є съдъ Ѹ врѣменѣхъ по старомъ Ѣаконъ ѿдъ Михоља дьнѣ до Георгева дьнѣ), was mentioned in King Radoslav’s charter presented to the Ragusans (4 February 1234).⁹⁹ Similar wording can be found in the Ragusan oath to Serbian King Stefan Vladislav (September 1234–April 1235): “And according to the old customs from the days of your grandfather and your father, the City [Dubrovnik] and the Land [Serbia] shall have a court for mutual lawsuits, from Saint Michael’s Day to Saint George’s Day” (*Et secundum quod est consutudo avi vestri et patri vestri civitas cum terra ut haben legem inter se de Sancto Michaele usque ad Sanctum Georgium*).¹⁰⁰ However, the expression *stanak*, denoting a mixed border-court, was

96 Dinić, “Krstasti groševi”, p. 110. The text refers to the meeting of Andronicos III and Stefan Dušan at *Radobosdion* according to John Cantacuzenos, which has been located at Radovišta (today Radoviš in North Macedonia) more probably in 1336. For more details see S. Ćirković, “O sastancima cara Andronika III i kralja Stefana Dušana” [“On the Meetings of Andronicos III and Stefan Dušan”], *Zrvi* 29/30 (1991), pp. 205–212.

97 Mošin, Ćirković, and Sindik, *Zbornik*, p. 56. Latest edition by I. Ravić, *SSA* 11 (2012), p. 14.

98 Mošin, Ćirković, and Sindik, *Zbornik*, p. 87.

99 Ibid., p. 130.

100 Ibid., p. 136.

mentioned for the first time in the Latin translation (Serbian original does not survive) of King Stefan Uroš's charter presented to the Ragusans (14 August 1243): "And let the *stanak* be between us from Saint Michael's Day to Saint George's Day, as it was in the days of his Majesty, my father with your ancestors and you at the appointed place" (*Et stanec sit inter nos a sancto Michaele usque ad sanctum Georgium, sicut fuit diebus domini patris mei cum vestris antecessoribus et vobiscum in loco constituto*).¹⁰¹ A few days later the Ragusans confirmed their oath using the same words, only the terms *in loco constituto* were replaced with *in antiquo loco*.¹⁰² The competence of the *stanak*, referring to disputes concerning border lands between the Kingdom of Serbia and the Republic of Dubrovnik, was determined in King Stefan Uroš's treaty with the Ragusans from 23 August 1254:

And considering lands and vineyards that you held until the death of his Majesty, my father, you shall hold them; and vineyards that were planted and lands that were acquired later, let them be reconsidered by the court. And if the court decides that they belong to me the King, let it be; but if it decides that they are yours, let it be. Court sessions shall be from Saint Michael's Day to Saint George's Day, when necessary, in the same place as it was on the days of his majesty, my father. Both judges [Ragusan and Serbian] must swear that they shall try righteously.

тако јемљу и виноград, ће уто сте држали до јуритића господина ми штца, да си ю држите; а потола уто се наиде посагено виноградами, или јемље пријемаше, да се сједом исправи. Да уто сјед јакже краљевств љ ми, бједи краљевств љ ми, а уто вам покаже—то вам. Сјед да стае ут Михоила дње до Георгијева дње, къди ви бједе трбеш. И сјед да стае гдј є и првје стогаљ љ дњи господина ми штца. Сједице ће ће да се кљнј, тако да право сјад. ¹⁰³

In the oath of Ragusan Doge Andrea Dauro to Serbian King Stefan Uroš I (August 1254), the *stanak* was called the "common court" (швькы сјед): "And if the common court condemns anyone of our citizens, we shall deliver his property" (И ако кога граганина ће сједи швькы сјед да подаємо његову добитькы).¹⁰⁴ So, it is clear that *stanak* was a border-court which had sessions in fixed places

¹⁰¹ Ibid., p. 174.

¹⁰² Ibid., p. 176.

¹⁰³ Ibid., p. 212.

¹⁰⁴ Ibid., p. 216.

and in the period between autumn (Saint Michael's Day, celebrated by Orthodox Slavs on 8[Julian]/21[Gregorian] November) and spring (Saint George's Day, 23 April[Julian]/6 May[Gregorian]). *Stanak* was explicitly mentioned in later charters until the reign of Tsar Uroš (1355–1371).

On the functioning of the *stanak* we have information in book III of the Statute of Dubrovnik: Chapter L1, “On customs between Ragusans and subjects of the Principality of Hum” (*De consuetudinibus inter Raguseos et homines comitatus Chelmi*); Chapter LII, “On customs between Ragusans and people from Bosnia” (*De consuetudinibus inter Raguseos et homines Bossine*); Chapter LIII, “On customs between Ragusans and people from Raška” (*De consuetudinibus inter Raguseos et homines Rassie*); and Chapter LIV, “On customs between Ragusans and subjects of Zeta” (*De consuetudinibus inter Raguseos et illos de Genta*).¹⁰⁵ It is remarkable that the Statute does not speak on Serbian land, but on their historical constituent parts (Raška, Hum, Zeta). According to Teodor Taranovski it is proof for an old, pre-Nemanjić origin of the institution of *stanak*.¹⁰⁶ The places of meeting were different, as well, but always in the surroundings of Dubrovnik: for the people from Hum in the fixed place near Saint Stephen in Zaton, outside (*ad locum constitutum ad Sanctum Stefanum in Malfo de foris*).¹⁰⁷ The *stanak* with the people from Raška was in Šumet, on the place called Pržinata, near the church of Saint Tryphon or in Kresta, close to the church of Saint Michael (*in Ioncheto, in loco qui dicitur Arena prope ecclesiam S. Triphoni vel ad Crestam prope ecclesiam S. Michaelis*).¹⁰⁸ Later on, this place was called Železna Ploča (literally “Iron Plate”). Courts with the subjects of Zeta were in session in Mlini, close to the church of Saint Hylarion (*ad Malina prope ecclesiam sancti Hylacrioni*).¹⁰⁹

Among the quoted chapters the most detailed is the one describing the *stanak* with the subjects of the Principality of Hum. However, in the chapters dedicated to the people from Raška (i.e. Serbia) and Zeta it was written that “this *stanak* must be held according to the provisions and regulations that are valid for the *stanak* of Hum” (*Et hoc stanicum debet fieri secundum ordinem et formam quod fit stanicum de Chelmo in omnibus*).¹¹⁰

The Statute differentiates between two types of court: “Grand” or “Plenary Stanak” (*stanicum magnum vel plenarium*) and “Petty” or “Proper Stanak” (*stan-*

¹⁰⁵ *Statut grada Dubrovnika*, pp. 226–231.

¹⁰⁶ Taranovski, *Istorija*, vol. IV, p. 150.

¹⁰⁷ *Statut grada Dubrovnika*, p. 226.

¹⁰⁸ Ibid., p. 230.

¹⁰⁹ Ibid., p. 230.

¹¹⁰ Ibid., p. 230.

icum parvum vel proprium). The “Grand Stanak” was convoked by the authorities of both countries for the purpose of resolving political matters and eliminating controversies. The “Petty Stanak” arose from an agreement of private persons (individuals), one from Serbia, the other from Dubrovnik, to administer their mutual disputes. Parties to the *stanicum magnum* were usually heads of the States, but “The King of Raška [i.e. Serbia] was not committed to come to the *stanak* in person, except if he wanted that, but he was obliged to send his representative; the Ragusan Doge had to do the same” (*Et rex Rasie personaliter non tenetur venire ad stanicum nisi fuerit de sua voluntate, sed ipse tenetur mitttere, et similiter facit d. comes Ragusii*).¹¹¹ Governments of both States appointed judges called *stani* (*judices sive stani*), in equal number for each party (*et sint tot iudices ex una parte quot ex alia*).¹¹² The number of judges was not fixed—two, four, even twelve and maybe more—but the number had to always be paired. Parties to the “Petty Stanak” elected judges themselves.

First of all, disputes where the plaintiff was the Prince of Hum (i.e. King of Serbia) were to be resolved, and then those where the plaintiff was the Doge and the Republic of Dubrovnik (*Et sit primum placitum comitis de Chelmo, secundum debet esse comitis et Comunis Ragusii*).¹¹³ If they had no litigations, then it was decided by lot (*per tessiram*) whose lawsuit would be first, and then one by one all the remaining cases. In the functioning of the *stanak*, a decisive role was played by oaths and guarantors, persons who promised to answer for a debt, default or miscarriage of another. A suit was lost by any party that was summoned but did not appear in court without any valid reason. That party was considered as culpable (*Et quecumque pars non venerit ad stanicum constitutum, et vocata fuerit et non habuerit iustum impedimentum clare factum, videlicet impedimentum Dei et contradicionem domini terreni, et iudicata fuerit, perdiderit placitum et erit torta*).¹¹⁴ Each party’s authorities were obliged to hand over the sentenced person, or to force him to pay the sentenced amount.

King Milutin abrogated the “Petty Stanak” and replaced it with a special mixed-court, but in the territory of Serbia, not in the border land. This novelty was mentioned for the first time in the draft, written in Latin, of his charter issued to the Ragusans on November 1301: *Item si aliquis Raguseus habuerit aliquam questionem cum aliquo Sclao quod illa questio non possit definiri per curiam regalem nisi per unum Raguseum et unum Sclauum judices in ipsa*

¹¹¹ Ibid., p. 230.

¹¹² Ibid., p. 228.

¹¹³ Ibid., p. 226.

¹¹⁴ Ibid., p. 228.

questione.¹¹⁵ In the charter that followed the draft, which was written in Old Serbian (14 September 1302), we read: “And if any lawsuit happens between a Serb and a Ragusan, justice shall be administered before a Serbian judge and before a Ragusan. And what they decided, let it be” (И ако се ће врбети кои дљьг междју Срба и Рагусана съ Дубровчанином, да да има је суд, првдъ судиши србъским и првдъ једнѣмъ Дубровчанином. И што судита тоги да је свршено).¹¹⁶ The same provision was confirmed by Milutin’s son and successor Stefan Uroš III Dečanski (27 December 1321), in his charter presented to the Ragusans: “for any plea, let them [Serbs and Ragusans] appear in court, where one judge is Serb and the other Ragusan. But, if a [Ragusan] has a litigation with a Saxon, let it be one [judge] Saxon and the other Ragusan, to administer justice” (У комъ год је дљьг, лише судомъ да се ищу, да је један Србъски суд и дубровчанин. Ако ваде пра съ Сасиномъ да ваде један Сасинъ а дубровчанин, првдъ тѣми да се расправлају).¹¹⁷ However, for crimes considering high treason, murder, slaves and a horse-thief, Ragusans had to appear before the King’s Court (А првдъ краљевство ми да иду за несврш, за вражду, за уеладина за конь: у томъ да је судъ Дубровчанин суд првдъ краљевством ми).¹¹⁸

So, the mixed-court was composed of a Serbian official (“Serbian judge”) and a Ragusan, obviously from any of the prominent members of the Ragusan colony in Serbia. This court was subordinated to the Serbian authorities, it functioned on Serbian territory, and this was its crucial difference from the *stanak*.¹¹⁹

During the reign of Tsar Dušan, lawsuits between Serbs and Ragusans were under the jurisdiction of Serbian state-officials. This is clear from a passage of the Dušan’s treaty with Dubrovnik (20 September 1349), where we read: “And Ragusan merchants, who happened to be in the Tsar’s and King’s market-towns, and who have to appear in court, let them litigate before the customs officer and headman, or before the kephale of the actual town, according to the law of my Imperial parent and progenitor” (И ће, трговци Дубровчанин се ће врбети по трговехъ царства ми и краљевехъ, што им се слуша кои лобо суди).

¹¹⁵ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 346–347.

¹¹⁶ Ibid., pp. 345–346.

¹¹⁷ Edited by S. Ćirković, *SSA* 5 (2006), p. 44.

¹¹⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 346.

¹¹⁹ On *stanak* see V. Bogišić, “Stanak po dubrovačkom zakoniku od 1272 godine” [“Stanak according to the Ragusan Code of the Year 1272”], *Glasnik sud* 44 (1877), pp. 197–231. This paper was also published in German, “Stanak, Stanicum nach dem Rechtsstatute der Republik Ragusa vom Jahre 1272”, *ASPh* 2 (1877), pp. 570–593. Also see Taranovski, *Istorija*, vol. IV, pp. 149–154, and S. Ćirković, “Stanak”, in *LSSV*, pp. 696–698.

да се съде предъ цариникомъ и к'неземъ, а или предъ киепалиомъ, кои бъдѣ градъ, тогази закономъ родитела и прародитела царствамъ).¹²⁰ However, for blood-shed, disputes arising over land, enticing and helping a villager to flee, slaves and horse-thief, Ragusans must appear in the Tsar's court (И за сиези да гредъ предъ царство ми на съдъ: за кръвъ, и за землю, и за проводъ, и за човека, и за съводъ, а за ино ни за цю).¹²¹

In contrast to the "Petty Stanak", the "Grand Stanak" was never abolished and was convoked for every dispute that the Serbian State and the Republic of Dubrovnik had. In the abovementioned treaty of Tsar Dušan with Dubrovnik, we can read:

And for my Imperial lands that you [Ragusans] have taken, over the boundary that existed in the days of my Imperiar parent and progenitor, the Sainted King, and vineyards that you have planted over the boundary, you must return all to me. And for trials and any justification, as it existed in the days of my Imperial parent and progenitor, let it be also at the present time and in years to come. And for all [pleas], the court shall be in session on the Iron Plate, as it used to be.

И цю бъдъ прѣзели землю царства ми и прѣз мегю која юсть била мегда ѿ родитела и прародитела царства ми, светаго краля, ако бъдъ и вино-граде по ини и насадили прѣз мегю в'се да ми поврате. И за съдовъ и всако ѿправ'дание, како съ имали ѿ родитела и прародитела царства ми, такози и ѿдь днъсъ напреда да имаю, и за в'се да юсть съдъ на Желѣз-ни плочи, како юсть и ѿдь прежде било.¹²²

This provision was confirmed by the same wording in Tsar Uroš's treaty with Dubrovnik (25 April 1357).¹²³

However, Prince Lazar in his treaty with Dubrovnik (9 January 1387) re-established the old mixed-court for lawsuits between Serbs and Ragusans, as existed in the epoch of King Milutin—half the judges were Serbs, half Ragusans (И ако се ѿчини која пра мегъ Дубровчани и Сръбли, да се постави половина съди дубровничкихъ, а половина Сръбъль, да се прѣд ними прѣ). The restoring of the mixed-court was followed by the setting aside of Serbian courts' jurisdiction for mutual litigations between Serbs and Ragusans: "And a Serb is not to summon

¹²⁰ Edited by D. Ječmenica, *ssa* 11 (2012), p. 39.

¹²¹ Ibid.

¹²² Ibid., p. 40.

¹²³ Edited by M.A. Černova, *ssa* 12 (2013), p. 83.

a Ragusan in any court, only before judges [of mixed court] ... and [Ragusans] are not to make efforts [appearing] in front of my lordship or my kephale" (И да не позива Сръбинъ Дъбровчанина на съдъ никамо тъкмо прѣдъ виези съдие ... а да се не мѣче прѣдъ господство ми ни прѣдъ кефалию).¹²⁴

5 Sovereign's (King's, Tsar's) Court

5.1 "King's" or "Tsar's Debts" (*Pleas of the Crown*)

A special estate-court established to administer justice exclusively to the nobleman class did not exist in mediaeval Serbia, as it existed in some other European feudal States (Hungary, Poland, Bohemia). The Sovereign's (King's) Court tried the entire noblemen class. Besides nobles, the King's Court administered justice to all dwellers in the ruler's domains and towns, and to villagers for all pleas which were in the sphere of the King's Court (*casus regales, cax royaux*, pleas of the crown), i.e. which were exempt from the jurisdiction of feudal courts (*curia baronis*). We do not dispose with a unique list of pleas of the crown, in Serbia called "King's" or "Tsar's debts", but examining the sources it could be concluded that pleas of the crown were: 1) high treason (*izdaja*); 2) enticing and helping a villager to flee (*provod* or *prejem ljudski*, in some documents called *čeljadin* = human being or *čovek* = man); 3) homicide (*vražda*); 4) bloodshed (*krv*); 5) horse-theft (*konj* or *svod konjski*); 6) disputes arising over land (*zemlja* = land); 7) professional thieves and brigands (*tat* and *gusar*). Article 192 of Dušan's Law Code mentions "rape of a noblewoman" (*razboj vlastičanski*) as one of the "Tsar's debts", but as this article occurs only in the late Rakovac copy, it is disputable whether it is reliable.

The surviving legal sources inform us only on the disputes arising over land that were tried by the King himself or by some of the high State-officials or judges appointed by the King. We shall quote several cases:

First, King Stefan Uroš III Dečanski, in the chrysobull presented to the Episcopacy of Prizren (April 1326), says that Položani had taken fields had always been the property of the church, and "my royal parent with Bishop Damian and Bishop Elijah found that out, and he seized [that fields] from Žegar and he set on fire his houses, and then my Majesty sent Despot Dragoslav with Bishop Arsenius to locate [that fields], and let the holy church hold those fields as it used to be at first" (И оужели юску были Положани, и изнашьль ю родигель

¹²⁴ Edited by A. Mladenović, *Povelje kneza Lazara*, p. 192.

кталиѧвъства ми съ юпископомъ Дамианомъ и съ юпископомъ Илишмъ, и штиель шт Жегра, и коуцие моу попалиль; и пакъ посла кралевъство ми деспota Драгослава съ юпископомъ Арсениемъ да ихъ изнадю, да си је има света цркви како је испръва било).¹²⁵

King Stefan Uroš's III Dečanski chrysobull issued to the monastery of Hilandar (6 September 1327) describes a dispute that appeared in the King's Court between the Hilandar hegoumenos and the brethren of the monastery, versus the King's noblemen Demetrios and Borislav, referring to a conflict of rights on lands in the village of Kosorića:

My Majesty the King writes and orders to be made known to everybody. Kyr Gervasius, reverend hegoumenos of the Most Holy Mother of God Hilandar monastery on Mount Athos, appeared in my Royal Court with the sons of land official Hardomil—Demetrios and Borislav. The hegoumenos said: "Neighbours, I am asking you, noblemen of his Majesty the King, why do you abuse by force the land and hill [belonging] to Hilandar, between Kosorići and Hilandar's villages?" Demetrios said: "We know nothing, the land and hill [belongs] to Kosorići." And the King ordered that they bring 12 elders from the county, trustworthy men, to come to the boundary, and to indicate, making a sworn statement, where is the boundary of Kosoriće and where is Hilandar's [estate]. And the King sent the assistant¹²⁶ Gradislav Vojšić. And the elders came on boundary and they took an oath to the assistant like this: you shall be cursed from the Lord your God and the Most Pure Mother of God, you and your homes and your children, if you shall commit perjury referring the eternal boundary of Hilandar's land and hill with Kosoriće. And they made a sworn statement and they demonstrated a boundary ... And those are the names of the elders ... After fixing a boundary, the hegoumenos appeared with the assistant and Demetrios and Borislav before me the King, and the hegoumenos with the brethren of the monastery, by their own free will, left to Demetrios and his brother a piece of land called Českovo, to use it as long as the monastery's community wants, but when the monastery requests [this piece of land] let [the monastery] have its own, with no dispute and litigation, and nobody may disturb that, small or great, as it was written.

¹²⁵ Edited by S. Mišić, *ssa* 8 (2009), pp. 16–17.

¹²⁶ The Serbian word is *priстав*, etymologically analogous to "assistant". He was the executive official of the court. On his duties, see below.

Пише и повелѣва кралев'ство ми въ се'вѣд'ниѥ всакомоу, како приде кра-
левствоу ми в'сечьстни игоум'нъ Светыи Горї Афони, прѣсвѣтыи Богородици
Хиландар'скии куръ Гервасиј на соудъ прѣдъ кралевство ми, съ сынови
теп'чије Хар'домила, Д'митромъ и Бориславомъ. Говоре игоумънъ: оупра-
шам ви сѹбди властеле господина крала, како притищете землю и бръдо
Хиландаръско послииъ мегю Косориќи и сели хилан'дар'скими. Говоре
Дмитръ, мы не знамо ница, земла је и бръдо косориќско. И тако и соуди кра-
левство ми да поведъ. ви. стариниќа жоуплѧнь, достовѣрнихъ чловѣкъ, да
се закльноу страшнимъ заклетијемъ, дошъдше на мегю да Ѹкајоу коудѣ
је мега косориќемъ, коудѣ ли хилан'даръско. И посла кралевство ми Гради-
слава Вонишка пристава. И придоše старинци на мегю, и закле ихъ при-
ставъ, тако да н'бесте проклетї ѿт Господа Бога и прѣчистије матер божије, и
ваши домове и дѣт'ца ваша некете крїво, Ѹдѣ је мега в'бчна хилан'даръске
земље, и бръда и Косориќемъ. И шни се заклеште страшнимъ заклетијемъ в'си
въ једино и Ѹказаше мегю ... А се имена старинисомъ ... И Ѹтесав'ше мегю,
приде игоумънъ съ приставомъ, и Дмитръ и Бориславъ прѣд кралевство ми, и
Хот'вињиѥмъ своимъ игоумънъ и стар'ци ѿставише Дмитръ з братомъ ѿт свое
земље коматъ Ческово, да се похране доклѣ је хот'виње звороу хилан'даръ-
скомоу и къди оузије манастиръ да си има своје, ни сѹда ни пре, и никоим
забав'но в'се мало гол'вмо како пише мега.

According to the pronounced boundary between the monastery's land and the village of Kosoriće and voluntary agreement between monastery and its neighbours, the noblemen Demetrios and Borislav, King Stefan Uroš Dečanski delivered the sentence that the monastery of Hilandar would acquire that land and hold it for eternity, and that nobody could deprive the church from that land (Сего ради записа и оутвръди кралевство ми знаменијемъ и словомъ кралевства ми въ всако оутвръжденије и свободоу, тако да си има света цркви прѣчистије Богородици хиландаръскїе сије в'се выше писано въ вѣки нештиемлено нисимъ).¹²⁷

The Dečani chrysobull (1330) mentions another dispute that arose over land and that appeared in King's Court: "My Majesty the King sent judges Bogdan and Parabko to fix the boundaries between Srednje Selo and Kumanovo, and 24 witnesses with them, and they fixed the boundaries ... And according to the testimony of witnesses, My Majesty ordered that the land has to be divided in two parts, and the division was done by judge Parabko" (Аво како посла кралев'ство ми соудијо Богдана и Параб'ка оутесати мегије Срѣд'нијемуоу селу и

¹²⁷ Edited by S. Mišić, SSA 3 (2004), pp. 5–7.

Коумановоу, а с' ними .кд. свѣдоце, и оутесаше мегиє ... а тоузи ѳем'лю ѹто присвѣ-
доковаше се'вѣдоци и рече кралев'ство ми на поли раздѣлти и раздѣли Парас'ко
соудниѧ).¹²⁸

Emperor Dušan's charter to the monastery of Hilandar (15 November 1349–1353) mentions the Tsar's Court solving litigation over land that the monastery brought against some noblemen, lesser lords and Vlach's hamlets. The document was created in order to confirm that the properties in Strumitsa area belonged to the monastery of Hilandar, since hegoumenos John of Hilandar with the chosen elders (курь Iѡанъ и съ честынми и избранными старци) had complained to the Tsar that those properties had been jeopardized by noblemen, lesser lords and Vlach's hamlets from that area (и говорише царьствъ ми како ихъ ѿбиде властеле и властеличики и катѹни влѧхъ царьства ми на пла-
нинахъ и забележъ). The document precisely specifies the boundaries of the Hilandar estate which the Tsar's lesser lord Branilo (властеличика царьства ми Бранилъ) was supposed to determine with 12 other elders. Besides that, the right to collect *inomistro according to the law* (Ида си Ѹзима иномистро по закону) had been given to the Hilandar monks.¹²⁹

The Serbian legal sources testify that the Tsar's Court was sometimes in session even during a gathering of State Councils. For example, Tsar Dušan's charter to the monastery of Hilandar (2 May 1355) is in the form of a judgment from the Council in Krupišta, which was held in 1355. Hilandar's hegoumenos Dorotheus presented the appeal to the determination of boundaries of pastures Kruščica and Ponorac, and complained to local noblemen who relocated to the market-town Kninac:

When my Imperial Majesty convoked the Council in Krupišta, in the presence of Right Reverend Patriarch Kyr Sabba, and Metropolitans, Bishops and hegoumenos, and all eremites of Holy Mountain Athos, and all Serbian, Greek and Maritime noblemen, reverend hegoumenos of the Holy Virgin Hilandar monastery Kyr Dorotheus and the elder of the Karea pyrgos Enophrios and other elders came here, exposing the chrysobulls of My Imperial progenitor, the Sainted King. And they spoke, here in the Council, how members of a supply unit¹³⁰ and stablemen settled on the top of the church enclosure Ponorac and Kruščica, where the monastery's sheep and mares graze. And they mentioned to My Majesty that Podgoričane do

¹²⁸ Edited by Ivić and Grković, p. 98.

¹²⁹ Edited by I. Komatina, *SSA* 13 (2014), pp. 209–210.

¹³⁰ The Serbian word is *stanici*. On the meaning of that word see section 2, “Court-Baron”.

not give half of the customs that they have from the village of Kamenitsa in Zeta and from the hunting-ground on the [River] Morača. And they mentioned how noblemen and villagers moved on the other place market-town Kninac, that they have in the *metochia*¹³¹ of Kruševac, and how they do not give customs from wine and other monastery's labour services ... And My Majesty sent judge Parabko to release the church enclosures Ponorac, Kruščica and Labićevac from members of a supply unit and stablemen. And they had to find in Orahovac 12 elders, good men, to fix the boundary of Ponorac, Kruščica and Labićevac, as it was written in the chrysobull of My Imperiar progenitor, the Sainted King. And nobody shall graze cattle in that enclosure, neither great, nor small lord, neither Vlach, nor Albanian.

Събрашоу царьство ми съборъ на Кроупицихъ, съ прѣсвѣтеннимъ патріархомъ кур Савою, и съ митрополити, и съ єпископы, и съ игоумены и съ всѣми поустиножителемъ Светије Гори Афона, и съ всѣми властели срѣб'скыими и грѣческыими и помор'скыими, тоу изыде всечестны игоумень светије Богородице Хилан'дар'скыи кур Дорофеи и стар'ць пирга каденскаго Ено-Фрие, и ини стар'ци, и изнесоше христовоуле прародитела царьства ми свѣтаго краля. И говорише тоу на сабору царьство ми како имъ соу сѣлы стан'ници и конюси на врѣхъ забель црквнога, на Понор'цу и на Кроушчици, где пасоу манастирскe швцe и кобилъ. И оу Зете цо имаю село половина Каменица, и на Мораче половина ловица, како имъ тези царине Подгоричане не даваю. И цо имаю у кроушев'скон метохїе тръгъ Киница, како имъ га властеле и метохїци прѣслѣдаю на другаа мѣста, и царине имъ ѿдь вина не даваю, и шть дроузехъ работахъ манастир'скыихъ вѣспоменоуше царьство ми ... И посла царьство ми соудио Парабъка да имъ ѿсвободи ѿдь стан'нисы и ѿдь конюхъ забель црквнїи, Понор'ць, и Кроушчицу и Лабиќево, да нагю ѿдь Орахов'ца вѣ старыць добрихъ чловѣкъ, коуде є мега Понор'цъ и Кроушчици и Лабиќево да штешоу, коуде пише христовоуле прародитела царьства ми, светаго краля. Да не пасе тен забель никои властелинъ, ни малъ и великъ, ни Влахъ, ни Арбанасинъ).¹³²

At the same Council in Krupišta Tsar Dušan passed judgment on a very complicated lawsuit referring to the land between Hilandar monastery and the

¹³¹ *Metochia* is a Greek word (μετόχια) meaning “monastic estate”.

¹³² Edited by M. Koprivica, *ssA* 15 (2016), pp. 11–12.

monastery of Saint Archangels. On that occasion he issued three charters (1355, two on 17 May and one on 2 July).

Another of Tsar Dušan's charters to the monastery of Hilandar, issued in a Council (8 June 1355, maybe also in Krupišta),¹³³ solved the dispute between the monastery of Hilandar, represented by hegoumenos Dorotheus, and imperial guards (въдци) over the village Karbinci. The Tsar delivered the verdict that only one part of the village was to be granted to the monastery, while the rest was to remain in the possession of the imperial guards. Hilandar monastery was granted the smaller part of the village Karbinci. Demarcation between these two parts of the village was conducted by David Mihojević, *kephale* of the city of Štip (Има хтѣниѥ и повелѣва царьстѡ ми да се вѣдомо всакомъ како прида и гѹменъ в'сечьстъни свѣтогорски Богородицѣ хиландарскѣ Дороѳеи и съ стар'ци и говори царьстѡ ми в селѣ зем'ли Каřбин'чкои како је има црксовъ Ѹ христовъ а съги је не дръже. И съпрѣщє се з бъци царьства ми предъ мномъ ѩо съ на тои зи зем'ли Каřбинъчкои и царьство ми въ то врѣмѣ не вбрѣте нигде дати бъцемъ да се прѣселѣ и послах кефалию цип'скога Давида Михојевиќа и стар'це и тези бъце да с краја ѡдтешъ цркви и Ѹтыкме. И пришдъ Давидъ споведъ царьстѡ ми како јесть меѓу ними Ѹтык'миль и ѡдтесали землю кѫде ми споведъ Давидъ).¹³⁴

In mediaeval society for many centuries there existed an old view that every subject of the State may present a lawsuit to the sovereign, because the King was considered as the chief defender of justice. In the course of time it became impossible in practice, especially with the enlargement of the State territory. Dušan's Law Code explicitly prohibits direct communication with the Tsar's court in two articles. First, article 175 orders: "But let no man summon to trial in my Imperial Court" (а никто да се не позива на дворъ царства ми). Article 182 prescribes: "No man may bring an action in my Imperial Court" (въсакъ чловѣкъ да неест вол'ња позвати оу дворъ царства ми). However, the only exception was provided by article 72: "And if any unfree person come to the Tsar's Court, let justice be done, to each, save only to the slave of a lord" (И кто неволын доидѣ на дворъ царевъ, да се въсакомъ оучини правда, и свѣтъ отроика властешскога).¹³⁵

¹³³ See M. Živojinović, "Akti sabora u Krupištima" ["Acts of the Council in Krupišta"], *Glas SANU, Odeljenje istorijskih nauka* 16 (2012), pp. 99–112.

¹³⁴ Edited by V. Petrović, *SSA* 14 (2015), pp. 108–109.

¹³⁵ Burr, "The Code of Stephan Dušan", pp. 534, 535, 212; Novaković, *Zakonik*, pp. 137, 141, 58; *Zakonik cara Stefana Dušana*, vol. III, pp. 150, 152, 118.

5.2 “Palace Court”

Beside the King's (Tsar's) Court, where the sovereign presided himself, Dušan's Law Code mentions the so-called “Palace Court”, i.e. a Court at the Imperial Palace, as a separate institution. Article 175 speaks on “a judge in my Imperial Court” (Кои соудїа јесть оу дворе царства ми) and article 177 on “my court judges” (прѣд соудишиъ двор'скыи). The origin of the “Palace Court” and “court judges” should be sought in the “King's Court officials” (*vladalci dvora kraljeva*), who could replace the King in trials.¹³⁶

The “court judge” was the supreme judge of the Empire (like *iudex curiae* in Hungary) and its existence is confirmed by Pope Innocent's vi¹³⁷ letter to Emperor Dušan (29 June 1354), referring to the Tsar's deputation which came to the Papal Court in Avignon (*Stefano regi Rasciae super receptione litterarum et nuntiarum suorum, ut papa viror in fide catholica plenius eruditos illuc mittat*). One of the representatives was “your supreme judge Božidar” (*Bosidaius Iudex tuus generalis*).¹³⁸ The Serbian sources mention judge Parabko, who was present at the “Palace Court” for 25 years. Eighty-one years later (1435), during the reign of Despot Đurađ Branković, we have information on “the great judge of his majesty Despot” (*il grande zudesse del signor dispoto*).¹³⁹

According to the provisions of Dušan's Law Code, the “court judge” had jurisdiction over three types of cases. First, the “court judge” presided over all crimes committed at the Imperial Court (article 175): “Whosoever be judge in my Imperial Court, let him judge such crimes as occur there” (Кои соудїа јесть оу дворе царства ми, и очини се зло т'ем'зи да се соуди). Second, the “court judge” was competent for all litigations of State-officials residing at the Imperial Palace (article 177): “Lords who dwell at my court, if they are sued, shall be tried by my court judge, and no one else shall try these cases” (Кои власт'вле стоје оу кљки царства ми въсегда, ако их при да их при прѣд соудишиъ двор'скыи, а инь никто да имъ не съди). Third, the “court judge” tried all litigants who intentionally came to the Imperial Court to seek justice (article 175): “The court judge shall also hear cases where litigants came intentionally¹⁴⁰

¹³⁶ For example see King Dragutin's charter to the monastery of Hilandar (1276–1281), mentioned above. Mošin, Ćirković, and Sindik, *Zbornik*, pp. 268–269.

¹³⁷ Latin Innocentius VI, 1282 or 1295–1362. Born Étienne Aubert, the fifth Avignon Pope, from 18 December 1352 to his death in 1362.

¹³⁸ A. Theiner, *Vetera Monumenta historica Hungariam, sacram illustrantia, tomus secundus, ab Innocentio PP. VI usque ad Clementem PP. VII, 1352–1526* (Rome 1860), p. 8.

¹³⁹ Jireček, “Das Gesetzbuch des serbischen Caren Stefan Dušan”, p. 191.

¹⁴⁰ The expression *namerom* (intentionally) Stojan Novaković translated as *slučajno*, and Burr following him used the words “happen by chance”. We think that Taranovski, *Istorija*, vol. IV, p. 162, note 1, has it right, saying that *namerom* means “intentionally”.

to my court" (ајде ли се убрѣтета пърц'а намѣромъ, на дворѣ царства ми, да имъ расоуди соудїа двор'съи).¹⁴¹

5.3 Tsar's Court as Appellate and Supreme Court

The Tsar's Court in mediaeval Serbia functioned at the same time as both appellate and supreme court. As a court of appeal, the Tsar's Court decided cases that had been appealed from a "trial court" or court of first instance. As supreme court, the Tsar's Court was the highest court in the land, or the court of last resort. The *Syntagma* of Matheas Blastares contains a definition of the Emperor's Court: "Autocratic and Imperial Court is [the Court] of last record and there is no appeal of its decisions; it examines its own sentences, as the God-Seer and Law-Giver Moses said: 'Who tries again, tries on its own'" (Τὸ αὐτοκρατορικὸν καὶ βασιλικὸν κριτήριον, ἐκκλήτῳ οὐχ ὑπόκειται, οὐδὲ ἀναψηλα-φᾶται ὑφ' ἑτέρου, ἀλλ' ὑφ' ἑαυτοῦ ἀεὶ ἐπανακρίνεται, καθὰ καὶ ὁ θεόπτης Μωῦσῆς νομοθετῶν, Ἐπανακρινέις τὰς κρίσεις σου, διηγόρευσεν, Самодръжав'юте и царскоте соудилиште посоужденио къ томоу не подлежить, ни же испитоуєть се отъ иного, нъ отъ сеbe прыисно посоуждаєть се, якоже и боговид'цъ Моиси законополагае: Поступиши соуди свое, повел'е).¹⁴² So, the *Syntagma* gave a definition of the Tsar's Court, but it does not explain the jurisdiction of the Emperor as supreme judge. Such a deficiency was supplied by several articles of Dušan's Law Code confirming that the Tsar tried in the cases of relation, supplication and maybe appeal.

Relation (Latin *relatio*, Greek ἀναφορά, ὑπόμνησις) was the right of judges to relate to the Tsar when they found any case very difficult. Article 105 prescribes relation only when "imperial charters ... my Code contradicts" (Книге цареве ... тере их потвори законикъ). Therefore he orders the judges in case of such a collision to refer the matter back to him. However, article 181 from the second part of the Code orders: "If there be a big case and they cannot decide it and come to a decision, however great the court may be, let one of the judges come with both the parties before me, the Tsar" (ајде се убрѣте велико дѣло, а не оуздмо-гогу расѣдити и расправити кои любо соудъ велики боудѣть, да греде ут соудїи единъ съ убѣма унѣмазїи пър'цема, прѣд царство ми).¹⁴³ The wording of this clause is clear enough: article 181 changed the provision from article 105, and it commands that every complicated case (*veliko delo*, "big case") must be related to the Emperor.

¹⁴¹ Burr, "The Code of Stephan Dušan", p. 534; Novaković, *Zakonik*, pp. 137, 138; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

¹⁴² Ed. Ralles and Potles, p. 218; ed. Novaković, p. 229.

¹⁴³ Burr, "The Code of Stephan Dušan", pp. 517, 535; Novaković, *Zakonik*, pp. 80, 140; *Zakonik cara Stefana Dušana*, vol. III, pp. 128, 152.

Supplication (Latin *supplicatio*, Greek δέησις) was the right of any subject to present a humble request (petition, prayer) to the Tsar, as a source of mercy. Article 72 introduces that right to “any unfree person” (небольнь), except only “the otrok of the lord” (всевен отрока властевскога).¹⁴⁴

It seems that appeal (*appellatio*, ἀπελλητος) as a complaint to the Tsar’s Court of an error or injustice committed by a lower tribunal did not exist in mediaeval Serbia. However, a fragment from Tsar Dušan’s chrysobull issued to Hilandar monastery (2 May 1355) orders that if someone from the elders or judges adjudged wrongly, an authorised *kephale* shall try them according to the law.¹⁴⁵ It is clear that the appellate court in this case is the court of the *kephale*, not the Tsar’s.

6 Organization of Justice

6.1 Judges

Until the reign of Tsar Stefan Dušan, judicial power, i.e. the authority vested in courts and judges, was not distinguished from executive power. Local government, city, county, or other governing body at a level smaller than the State could also judge, when it was necessary. King Stefan Dragutin’s chrysobull presented to the monastery of Hilandar (1276–1281) forbids to “sebastos and any other local official to administer justice on monastery estates” (Λεσβαστη ον ιην και βλαδαλης ον γεμεν δα ηε σογδε ον σιχη μετοχηιαχη).¹⁴⁶ Documents preserved in the Archives of Dubrovnik testify that justice was administered by the following Serbian local governing officials: *župan* in Konavli (1278),¹⁴⁷ headman (*knez*) in Hum (1303–1305), *sebastos* in Prizren (1312), *župan* in Dračevitsa (1319),¹⁴⁸ *kephale* (*castellanus*) in Skopje (1333).¹⁴⁹

The concept of a judge (Greek χριτής, δικαστής, Latin *iudex*, Serbian *sudija*, *судија*, *судија*) as a public officer, appointed to preside and to administer the

¹⁴⁴ Burr, “The Code of Stephan Dušan”, p. 212; Novaković, *Zakonik*, p. 58; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

¹⁴⁵ See section 1.1.

¹⁴⁶ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 268–269.

¹⁴⁷ Čremošnik, *Istoriski spomenici dubrovačkog arhiva, serija treća, sveska 1*, p. 18, no. 3.

¹⁴⁸ In the territory of ex-Yugoslavia there are several places with the name Dračevitsa (Dračevica, Драчевица): a mediaeval county (*župa*) near today’s Herceg Novi and a village near the city of Bar (Montenegro), a village near the municipality of Studeničani and a village in the municipality of Demir Kapija (North Macedonia), and a village on the island Brač (Croatia).

¹⁴⁹ Jireček, “Das Gesetzbuch des serbischen Caren Stefan Dušan”, pp. 173–176.

law in a court of justice, penetrated into Serbia under Ragusan and Byzantine influence. As we wrote above, *sudije* (judges) were already mentioned in the treaties with Dubrovnik, in *stanicum* and in mixed-court for lawsuits between Serbs and Ragusans. The same happened on lands conquered from Byzantium: Saint George's charter, for example, mentions "judge great and small" (сѹдїа вељи и мали) and "judge in the city and in the county" (ни сѹдїа градѹ, ни сѹдїа жоупски).¹⁵⁰

It seems that King Stefan Uroš Milutin had the intention of separating judicial from executive power. His legislation does not survive, but articles 79, 123, 152 and 153 of Dušan's Law Code mention different aspects of judicial reform, attributed to the "Sainted King". However, King Dušan's chrysobull for Htetovo monastery, issued in 1343 (six years before the first part of the Code) says that "for all litigations that Church villagers have on my King's Court, justice shall be administered either by judges, or by State officials, great or small" (И ѿ се пре црксов'ны людие на двору краљевства ми или прѣдь инѣми сѹдигами, или прѣдь инѣми владоуцими, малыми и великыими).¹⁵¹ This means that the previous practice did not vanish completely; even in the King's Court, governing officials and professional judges tried at the same time.

A general reform of the judicial system in Serbia was finally done during the reign of Tsar Stefan Dušan. His Law Code in numerous articles orders that only judges should exercise judicial power. Article 148 speaks on "judges whom I appoint to judge in the land" (Сѹдїе које царство ми положи по земли сѹдити), and article 175 commands: "But let no man summon to trial in my Imperial Court, but in the circuit of the judges whom I the Tsar have appointed" (а никто да се не позива на дворъ царства ми мимо юрлости сѹдїи, коих јесте поставила царство ми).¹⁵² Trial procedure is always before the judges, as is demonstrated by several articles (see Chapter 27 dedicated to trial procedure). However, Tsar's Dušan's treaty with Dubrovnik, composed only four months after the Code (20 September 1349), orders that justice shall be administrated by a customs officer, headman and *kephale*. Judges were not mentioned. Tsar Dušan's charter to Hilandar monastery (2 May 1355) says that the crime of straying (*popaša*) was in the jurisdiction of the *kephale*. The perpetrator shall give 300 rams to the *kephale*, "and there shall be neither trial, nor litigation" (Кто ли се наре, малъ и великъ, и име пасти посилиемъ, в'саки настоецїи кефалїа да оузвметь на ніемъ

¹⁵⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

¹⁵¹ Edited by M. Koprivica, *ssa* 13 (2014), p. 150.

¹⁵² Burr, "The Code of Stephan Dušan", pp. 526, 534; Novaković, *Zakonik*, pp. 115, 137; *Zakonik cara Stefana Dušana*, vol. III, pp. 140, 150.

Тъмно възновъз за тон, да не ни соуда ни пре).¹⁵³ Article 194 of the Code starts as follows: "The law of fines for Church people. What is adjudged before the Church or *kephale*" (И глове на църквниих людех что се съде прѣдъ църквомъ и прѣдъ киеваліемъ).¹⁵⁴ If we accept authenticity of article 194 (surviving only in the late Rakovac manuscript), we can conclude that *kephale*, beside judges, had some judicial competences.

Several articles of the Code testify that the judges were on circuit within a defined district (*oblast*), i.e. there was the existence of so-called circuit courts.¹⁵⁵ In article 110 we read: "Judges who travel about my dominion and in their own province" (Соудїе коудїв грѣд по земли царства ми, и свои вѣласти). There is a similar provision in article 179: "Judges who are travelling within the bound of their circuit" (Соудїе да проходе по землях коудї комѣ єсть вѣласть). Article 182 starts with the following wording: "No man who is in the district of the judges may bring an action in my Imperial Court" (Кто єсть оу вѣласти коих соудїи, всакъ чловѣкъ да не есть волънъ позвати оу дворъ царства ми).¹⁵⁶ We have no information on the size of districts nor what the criteria were for their formation.

The judge of a district presided in the trial court, i.e. the first court to consider litigation. This is clear from final words of articles 175 and 182: "Let each appear before his own judge" (тък'мо да грѣд въсаки прѣдъ свога соудїю), and "He may appear only before his own judge in whose district he is, that the matter may be tried according to the law" (тък'мо да грѣд въсаки прѣдъ свога соудїю, оу чиен вѹдї вѣласти да се расоудїи по закону).¹⁵⁷

In the regions conquered from Byzantium, the sources mention two cases when public assemblies of noblemen and villagers (*vlastele i chora*)¹⁵⁸ tried disputes arising over Church land. The first document has already been quoted,¹⁵⁹

¹⁵³ Edited by M. Koprivica, *ssa* 15 (2016), p. 112.

¹⁵⁴ Burr, "The Code of Stephan Dušan", p. 530; Novaković, *Zakonik*, p. 145; *Zakonik cara Stefana Dušana*, vol. III, p. 276.

¹⁵⁵ In some mediaeval jurisdictions, a judge in a circuit court would travel between various geographic regions to hear cases as necessary.

¹⁵⁶ Burr, "The Code of Stephan Dušan", pp. 518, 534, 535; Novaković, *Zakonik*, pp. 84, 139, 141; *Zakonik cara Stefana Dušana*, vol. III, pp. 128, 152.

¹⁵⁷ Burr, "The Code of Stephan Dušan", pp. 534, 535; Novaković, *Zakonik*, pp. 137, 141; *Zakonik cara Stefana Dušana*, vol. III, pp. 150, 152.

¹⁵⁸ These assemblies are similar to *mallum* or *ding* of Old German law. *Mallum* was a public national assembly and a court of higher kind in which the more important business of the country was dispatched by the count or earl.

¹⁵⁹ Inventory of Htetovo monastery property (1343), already quoted above. Slaveva, Miljkovik-Pepelj, and Mošin, *Spomenici za srednovekovnata i ponovnata istorija na Makedonija*, vol. III, p. 289.

and the second from the year 1376, concerning the boundaries in the region of Strumitsa (North Macedonia), says:

In the time of Tsar Stefan [Dušan] brigands stole the Tsar's horses and beat up people, and the Tsar ordered that neighbourhoods pay common indemnity, and all neighbourhoods, noblemen and chora, stepped out and said before Tsar Stefan: 'That land does not belong to us, it belongs to Hilandar, and it was given by caesar Hrelja, and it was written in Tsar Stefan's chrysobull.' And they referred the Tsar to Hilandar's villages, and Hilandar paid for its villages common indemnity and a fine for murder, because the land was the monastery's.

и при цари Стефанѣ знамо: оузе гоуса коне цареве и люди извише, и посла царь да плати околина приселицу, и изиде околина вся, властеле и хора, и рекоша прѣд господином царемъ Степаномъ: 'ничия од нась тази земля нѣ, тъко Хиландарска, и даль ю є Хрелја кїесарь Хиландароу, и имаю сию отъ Хрисовоули цара Степана.' И окривише тъгаци прѣд царемъ села хиландарска, и плати Хиландаръ своимъ сели тузи приселицу и вражде, зане бѣше нихъ земля.¹⁶⁰

6.2 *Judicial Assistants*

Judicial assistants are persons who stand by and aid or help judges. Ordinarily this refers to an employee whose duties are to help his superior (judge), to whom he must look for authority to act. The Serbian legal sources testify that execution of court judgments was conferred to *otroci* (slaves), private judge's servants. An *otrok* was a judicial assistant in ecclesiastical courts, but in the State courts as well. The Saint George's charter confirms that "everyone who can try" (И кто се найде соудиць) usually "must give an *otrok*" (и штрокса давъ на ны).¹⁶¹ In the Middle Ages, when the State had a patrimonial character, it was not strange to consider that execution of judgments was the private job (*suum negotium*) of a judge, although judgment was in the sphere of public law. So, the judge's *otrok*, as personal staff who usually worked on the judge's estate, could be sent to execute a judgment pronounced by the court.¹⁶²

The judicial assistants at the Sovereign's (King's, Tsar's) Court were different officials, whose duties were not only judicial, such as *tepčija*, *despot*, *kephale*, *Tsar's nobleman*, or *lesser lord*, because it was customary for the Tsar to send

¹⁶⁰ Solovjev, *Odarbani spomenici*, p. 170.

¹⁶¹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

¹⁶² See Chapter 5, section 3.

even his nobles on official duties. However, the most important among judicial assistants was the so-called *pristav* (приставъ, Latin *pristaldus*, *prestaldus*, *praestaldus*). The word occurs often in Dušan's Law Code, and we shall examine its meaning.

The word *pristav* comes from preposition *pri* = by, at, near, close, and a radical *sta*, from which was derived the verb *stati* = to stand.¹⁶³ So, *pristav* is "someone who stands by", etymologically analogous to "assistant". The *pristav* was the executive official of the Court and was present in the Tsar's Court and in the Judge's Court as well (article 91). According to article 56 litigants "shall be summoned by the *pristav*"¹⁶⁴ (и кто боудѣ позванъ ... с приставомъ),¹⁶⁵ and article 178 says that a duty of the *pristav* is to execute the judge's writ (Соудїе коудїе посылаю приставе, и книге свое).¹⁶⁶ "In article 91 we find *pristav* placing his knowledge of law and procedure at the disposal of litigants and formally acting as advocate".¹⁶⁷

Of Advocates (Of Pristav). When two are at law, if one say: "I have a *pristav* here in the Tsar's Court, or in the Judge's Court", let him produce him. But if he seek him and find him not in the court, let him return forthwith to the court and declare: "I have not found the *pristav*." And if he be at dinner, let him be given time until supper, and if he be at supper, then until the next dinner hour, and if the Tsar or the court have sent that *pristav* upon some service, then he who hath called him is not at fault, and time shall be given him until the *pristav* come, to bring him to the court.

С приставомъ. Къди се пройита два, ако рече единъ шт ныю имамъ пристава овдѣзи на дворѣ царевѣ, ако ли на соудїинѣ да га дада къда поище шн'деи и не шврбцие га оу дворѣ тъ часъ да пройидѣ на соудъ, и рече не наидохъ пристава. ако юсть на швѣдѣ да мѣ юсть рокъ на вечере. ако ли на вечере да юесть на швѣдѣ да га дастъ. ако ли га боудѣ шдъслалъ царь. ако ли соудїе на работѣ тогазїи пристава. да нѣ юсть криивъ он'зи коинно га даде, да моу се постави рокъ, да къда шн'зи приставъ пройидѣ. да га дада прѣд соудїа-мїи.¹⁶⁸

¹⁶³ Mažuranić, *Prinosi*, p. 1149.

¹⁶⁴ "Officer" in Burr's translation ("The Code of Stephan Dušan", p. 209), and "clerc" in Krstić's translation (*Zakonik cara Stefana Dušana*, vol. II, p. 244).

¹⁶⁵ Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

¹⁶⁶ Novaković, *Zakonik*, p. 138; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

¹⁶⁷ Burr, "The Code of Stephan Dušan", p. 209, comment on article 56.

¹⁶⁸ Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 70; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

Interpretation of article 91 makes it clear that litigants during the trial needed a *pristav*. It was necessary because the *pristav* was a court official who had knowledge of some facts, relevant for a legal act. Some contracts, agreements or deeds of gift could be concluded only in the presence of a *pristav*, and he could testify that a particular legal action was performed. In his testimony there was no doubt at all, and the *pristav's* testifying was considered as an incontestable evidence. Therefore, trial procedure was postponed until litigants found a *pristav*. If a *pristav* was on official business a new term for its arrival and continuation of judgment was fixed.

The *pristav* was a law officer of so-called *fides publica* (public faith)—particularly dealing with some evidences that were protected by *fides publica*. All evidence given under a pledge of *fides publica* was considered to be faithful until proven otherwise. The burden of proof rested on the plaintiff or on the party who advanced a proposition affirmatively. In Serbo-Croatian legal history, until the end of the 15th century, we find three institutes of “public faith”: 1) *pristav*, 2) public notary, and 3) authentic seals (stamps).¹⁶⁹ However, in a primitive society with a lack of literacy, the force of *fides publica* was attributed to verbal statements of some trustworthy persons, who were invited to assist in the conclusion of some legal acts, and then to confirm by their statements all the relevant facts, which were protected by public faith. In Old Slavonic law, especially by Serbs and Croats, such a trustworthy person was a *pristav*.¹⁷⁰

However, the second part of Dušan's Law Code changed the function of a *pristav*, as is evident from articles 162 and 163.

Of *pristavs*. *Pristavs* may go nowhere without writs of the court or without my Imperial writ; but wheresoever the judges send them, they shall write them writs, and no *pristav* shall take anything save what is written in the writ. And the judges shall keep true copies of the writs which they have given to the *pristavs* whom they have sent on business through the land. And if a *pristav* be accused of acting otherwise than the writ prescribes, or if they have tampered with the writ, there shall be a trial for them and they shall appear before the judges, and if it be shown that they have fulfilled what is written in the copies which the judges keep, they are justified. But,

¹⁶⁹ M. Kostrenčić, *Fides Publica (javna vera) u pravnoj istoriji Srba i Hrvata do kraja XV veka* [*Fides publica: Public Faith in Legal History of Serbs and Croats until the End of the 15th Century*] (Belgrade 1930), p. 5. Cf. L. Margetić, “O srednjovjekovnom pristavu” [“About the Medieval Court Clerk—Pristav”], *Zbornik Pravnog Fakulteta u Zagrebu* 55.2 (2005), pp. 271–324, especially pp. 304–306.

¹⁷⁰ Kostrenčić, *Fides Publica*, pp. 5–41.

if it be that they have tampered with the writ of the court, let both their hands be cut off and their tongues slit.

С приставех. Пристави везь книгје соудїне, никамо да не гредъ, или везь книгје царства ми. развѣ камо их посилаю соудїе, да имъ пишъ книге. и да не оузме приставъ иного развѣ що пише книга. а соудїе да дръже таксегиере книгје каквено съ дали приставомъ, коихно съ послали да исправе по земли. да ако боудѣ потворъ приставомъ, ере боудъ ино Ѹбинили него що книга пише, или аще боудъ прѣписали книгје на инь шбрзъ да имъ ѿсть шправданїе да гредъ прѣд соудїе. и аще се шбрѣте ере съ съврьшили како пише ѿ съдїне книзѣ које дръже, да съ прави. аще ли се шбрѣте ере съ инако прѣтворили соудъ, да им се роуцѣ штѣкъ и єзыкъ оуреже.¹⁷¹

Of judges. Every judge shall write his judgments and keep them and shall write a copy thereof and give it to him who has won his suit. The judges shall send as *pristav*s good, honest and trustworthy men.

С соудїах. Въсаке соудїе що соуде да оуписою соудове, и да дръже ѿ сеъѣ, а доногъ книгоу оуписав'ше да ю даде иномоузїи кои се боудѣ шправиль на съдѣ. Соудїе да посилаю приставе, добрѣ, праве, и достовѣрне.¹⁷²

It is clear that the *pristav* is no more an independent and confident law officer of *fides publica*. According to articles 162 and 163, he was only a judge's assistant, who had his functions in the initial and final stages of trial procedure. Such an evolution of the institution of the *pristav* is in connection with the strengthening of central State power that occurred in 14th-century Serbia.¹⁷³

¹⁷¹ Burr, "The Code of Stephan Dušan", p. 531; Novaković, *Zakonik*, p. 128; *Zakonik cara Stefana Dušana*, vol. III, p. 146.

¹⁷² Burr, "The Code of Stephan Dušan", pp. 531–532; Novaković, *Zakonik*, p. 130; *Zakonik cara Stefana Dušana*, vol. III, p. 146.

¹⁷³ For more details see Kostrenčić, *Fides Publica*, pp. 55–60.

Trial Procedure

1 Main Characteristics

Serbian mediaeval law did not make a difference between criminal trial procedure (the process of taking a criminal case to court) and civil trial procedure. Both, a civil action and a criminal one, came about when two or more people became involved in a dispute that they were unable to settle by themselves. One of them seeks to have a third party, the court, settle the dispute for them. To do this, a court action, known as litigation (a suit at law) must be brought. In mediaeval Serbia the parties to a lawsuit were called *parci* (пър'ци) = litigants. The person who brought the suit was called *parčija* (пър'чија, пърьци, plural form *parci*) = the plaintiff. The person against whom the suit was brought was called *otparčija* (втпър'чија) = the defendant.

Trial procedure was the only permitted way to institute criminal proceedings or for settlement of private law demands. Judgment arbitrarily and wilfully without a court was strictly forbidden, especially in commercial relations with the Ragusans. The treaties of Serbian monarchs with Dubrovnik prohibit two types of reprisals of Ragusan merchants: so-called *izam* or *preuzam* and *udava*.

Izam (изъмъ) was the self-willed deprival of property that belonged not to a Ragusan-debtor himself, but to anyone of his fellow-townsman.¹ It was forbidden already in the oath of Great Župan Stefan Nemanjić to the Ragusans (1214–1217), preserved in Serbian and Latin texts. The Serbian wording *a da ne izma* (а да не изъма) was translated into Latin as *et ut non fiant pressalia*.² The same formula was present in four treaties of Bosnian Ban Matej Ninoslav (1232–1235, 1235–1236, 1240, 1249), but only in the Serbian versions.³ Later treaties with Dubrovnik, including the most detailed (King Milutin's of 1302 and Tsar Dušan's of 1349), do not mention provisions referring to prohibition of *izam*. According to King Milutin's letter to his župan Tvrtko (c.1285), we can conclude that the principle of *izam*'s interdiction was respected, although the term *izam* was not

¹ Đ. Daničić translated the word *izam* as *sumptio, exactio* (*Rječnik iz književnih starina srpskikh*, vol. I, p. 404). In some documents from Bosnia, *izam* means "exception" (*exceptio*). See Mažuranić, *Prinosi*, p. 441.

² Mošin, Ćirković, and Sindik, *Zbornik*, p. 87.

³ Ibid., pp. 140, 142, 154, 182.

mentioned. The King wrote that the Ragusans had captured a boat of a certain Urseta (Кралевства ми любовномъ жупанъ Твртъко знаши како є зето Ђуројеви држво), a subject of the King, and he sent the damaged person to *župan* Tvrtko, ordering him to take from the Ragusans' property what is possible and to deliver that to Urseta (као можъ инози земи на нихъ и подан Ђуројеви). However, Tvrtko was not allowed to disturb other Ragusan merchants who were circulating in Serbian market-towns (а кои ти гредъ на тргъ кралевства ми нѣмаи за не печали).⁴

It seems that at the end of 14th and beginning of the 15th centuries, when central State-power with the arrival of the Turks lost its efficacy, the *izam* (in 14th- and 15th-century sources called *preuzam*) became a reality again in everyday life. After the battle of Nicopolis,⁵ two Ragusans were ransoming "French children" (дѣцъ францијашкъ), i.e. French prisoners of war. The Turks started to pursue them, but instead of them they captured a few Ragusans. So, the Ragusans addressed a letter to Prince Stefan Lazarević, on 1 October 1397, asking him to help liberate the innocent Ragusan merchants. In the letter we read: "Your Grace knows that from the time of all Serbian nobles and Sainted and deceased Prince [Lazar] it was written to us that there shall be no *preuzam* to anybody, and that no one shall suffer because of another. And Your Lordship has confirmed all that to us" (А ваша милостъ зна јеръ и да, всѣхъ господъ сръбъскѣхъ и и да, Светоочищега Кнеза јест намъ записанъ да нѣ прѣзма никомъ и да једанъ за другога не пати. И този все намъ је Господство ви потврдило).⁶ Having learnt from that experience, the Ragusans insisted that in the new commercial treaty with Despot Stefan Lazarević the provision of *preuzam*'s interdiction must be inserted (2 December 1405): "Another wish of my Lordship. If any Ragusan is owing to someone, or culpable for anything, let the culpable person be accused, not the other Ragusan to be wanted, only who is in debt or culpable, he has to pay or to suffer; *preuzam* shall not be put into use" (И ћије хоте Господство ми. ако је кои Дубровчанинъ комъ длъжњи, а или чимъ криви, да се ище истьц. а да на иншм Дубровчанинъ нѣ воли питати, тъко и то је длъжњи или чимъ криви онъ да плаати и пати. и за једнога на другом да

⁴ Edited by Stojanović, *Stare srpske povelje i pisma*, vol. 1, p. 35; Mošin, Ćirković, and Sindik, *Zbornik*, p. 184.

⁵ The battle of Nicopolis took place on 25 September 1396 and resulted in the rout of an allied army of Hungarian, Croatian, Bulgarian, Wallachian, French, Burgundian and German forces, against the Ottoman Empire. The Ottoman force also included 1500 Serbian heavy cavalry knights under the command of Prince Stefan Lazarević, who was Sultan Bayezid's brother-in-law and vassal since the battle of Kosovo 1389. The battle was a great Ottoman victory.

⁶ Mladenović, *Povelje i pisma despota Stefana*, p. 24.

не прѣзма).⁷ The same wording can be found in the later charters of Đurđ Branković from 1428 and 1445.⁸

A second type of reprisal was so-called *udava*. According to Vladimir Mažuranić the word *udava* comes from verb *udati*, meaning the right of a creditor to imprison his debtor.⁹ Duro Daničić translated it with the Latin terms *datio* and *comprehensio*.¹⁰ *Udava* was mentioned for the first time in King Milutin's charter presented to the Ragusans (1302), but it is quite probable that it existed many years before, as a provision of customary law. In our document we read: "And no man in Serbian land, great or small, shall imprison [udati u udavu] a Ragusan for a debt" (и никеднь уловѣкъ Ѹ Срѣпьскои Зем'ли малъ же и великъ да не Ѣдае Ѹ Ѣдавъ дѣбров'чанина). In the Latin draft of this treaty, the Serbian wording is translated as: *Item quod nullus homo mag-nifici domini regis poscit dare alii cui Raguseo innodalia de aliqua pecunia.*¹¹ Prohibition of *udava* was confirmed in King Stefan Uroš Dečanski's charter issued to the Ragusans on 27 December 1321: the King orders that all disputes between Serbs and Ragusans shall be discussed in court (Да имъ нѣ Ѣдаве Ѹ комъ годѣ дѣлгѹ, лише сѹдомъ да се ици, да ѿ ѹд'ни Срѣблинъ а дрѹги дѣбровъчанинъ).¹²

King Milutin's chrysobull for the monastery of Saint George (1300)¹³ and King Dušan's chrysobull for Htetovo monastery (1343)¹⁴ mention *udava* (ѹдава), but as a fine for the crime of so-called *samosud* (self-judgment). Dušan's Law Code prohibited *udava* in article 84: "There shall be neither ... nor imprisonment for debt, but let every man be tried according to law" (да нѣсть ... ѿдаве, тѣкмо да се соуди по закону).¹⁵

In spite of the prohibitions of *udava* and the fact that the sources from the second part of the 14th century do not mention it, it seems that *udava* was very

7 Ibid., p. 44.

8 Edited by Stojanović, *Stare srpske povelje i pisma*, vol. II, p. 19. See the article S. Ćirković, "Izam", in *LSSV*, pp. 249–250.

9 Mažuranić, *Prinosi*, p. 1487.

10 Daničić, *Rječnik iz književnih starina srpskih*, vol. III, p. 353.

11 Mošin, Ćirković, and Sindik, *Zbornik*, p. 344.

12 Edited by S. Ćirković, *SSA* 5 (2006), p. 44. The charter was attributed to King Milutin for a long time, but S. Ćirković, "Prva povelja kralja Stefana Dečanskog Dubrovniku" ["The First King Stefan Dečanski's Charter to Dubrovnik"], *PKJIF* 37 (1971), pp. 208–212, convincingly proved that the charter was promulgated by Milutin's son, Stefan Dečanski.

13 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 317, 326.

14 *SSA* 13 (2014), p. 150.

15 Burr, "The Code of Stephan Dušan", p. 214; Novaković, *Zakonik*, p. 66; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

common in relations between Serbs and Ragusans. We have information that in 1422 three Ragusan noblemen were captured for a debt (‘ѢДАЉ ИХЬ Ё НѢКС ЁДАВѢ’). The Republic of Dubrovnik, in the letter addressed to Despot Stefan Lazarević (18 February 1422), complained of the self-willed imprisonment of its citizens and asked for them to be released. The Ragusans referred to *udava*'s interdiction as an ancient and firm legal institute, writing: “Your Lordships knows very well that among other good laws and liberties, that were written to us by magnificent Serbian Orthodox lords, Your progenitor and Your magnificent parent, Sainted Prince, it was confirmed that neither Turk, nor Greek, nor Serb, nor Ragusan, in all the State of Your Lordship, cannot imprison any Ragusan” (*Господство ви добро знає ѿрь мегю и нѣмми добрѣми законъми слободыцинами имамо је славнѣхъ записехъ господе православне срѣбъске вашехъ прародителъ и Светога Кнеза родитела ви и Господствомъ ви славнѣмъ потврђено да ни Тѣрчинъ ни Грѣкъ ни Срѣбинъ ни Дѣбровчанин по вѣсом дрѣжави Господства ви нѣ волѧни ни морѣ ёдати Дѣбровчанина).*¹⁶ However, Despot Stefan Lazarević refused to insert a prohibiton of *udava* in his treaty with Dubrovnik. As Ragusan's complaints on *udava* became very common, Despot Đurad Branković agreed to add in two of his charters presented to Ragusans (13 December 1428 and 17 September 1445, with practically identical content) a short passage containing a strict prohibition of *udava*: “And the honest [Ragusan] noblemen mentioned to My Lordship what was not written to them by my Sainted and deceased parent Despot Stefan about *udava*; and for that reason My Lordship produced a deed of gift, that *udava* was not to be used on any Ragusan by anybody” (*Иѡцъ оуспоменоуш ѕ Господствоу ни више реченыи властелъ, ѿ имъ нѣсть било записано је Господина и родитела ми Деспата Стевана за оудаве. и за този им оучини милостъ Господство ми да нѣ оудаве на Дѣбровчанин ј по никеднь начинъ ни ћо кога*).¹⁷

On the basis of the quoted sources, a first interpretation of *udava* was given by Stojan Novaković already in 1892. According to him *udava* was arbitrary imprisonment for debt, without a court trial.¹⁸ His opinion was accepted by most prominent experts for the history of the Serbian Middle Ages, such as

¹⁶ Mladenović, *Povelje i pisma despota Stefana*, p. 76.

¹⁷ Edited by Stojanović, *Stare srpske povelje i pisma*, vol. II, p. 19.

¹⁸ S. Novaković, “*Udava ili samovlasno apšenje za dug u starom srpskom zakonodavstvu i narodnim običajima. Prilog k poznavanju srednjovekovnog parničnog postupka u Srbiji*” [“*Udava or Arbitrary Imprisonment for Debt in Old Serbian Legislation and Folk Customs. Contribution to the Knowledge of Mediaeval Civil Trial Procedure in Serbia*”], *Pravnik* 1 (1892), pp. 97–107 = *Vaskrs države srpske i druge studije*, KJP 1 (Belgrade 1986), pp. 225–242.

Constantine Jireček,¹⁹ Teodor Taranovski,²⁰ Alexander Solovjev,²¹ Nikola Radojčić,²² and Dragoslav Janković.²³ However, it was clear even to Novaković that in several cases, described by later sources, *udava* does not mean only self-judgment (*samosud*), but an action of State authorities as well. A different interpretation of *udava* was given by Sima Ćirković, presenting two new documents from the Archives of Dubrovnik.²⁴

The first document from the year 1411 says that Mara Branković²⁵ pronounced a fine of 500 perpers as *udava* to Ragusan citizen Stipko Sergulović, and deprived him of one mining shaft (*vui laviti usdato a Madona Mara et per questo la dicta dompna gla tolto una sua fossa ... e se la ano data a dona Mara digando soura de mi che son torto, togllibyperperi 5000*).²⁶ So, Stipko was accused by his enemies and punished with *udava*.

The second document states that the Ragusan merchant Maroje Držić had to pay in Srebrenica a fine of 50 perpers because he avoided paying the customs duty. The next year, when he was writing an appeal to the Ragusan Community, he called the fine that he paid *udava* (*pena ala zitade zoe vdaua*).²⁷

The conclusion of Sima Ćirković is that *udava* was a fine pronounced without trial, a type of fixed sentence specifying the exact penalty that would follow

¹⁹ Jireček and Radonjić, *Istorija Srba*, vol. I, p. 278; vol. II, p. 119.

²⁰ Taranovski, *Istorija*, vol. II, p. 44, vol. IV, p. 177. Taranovski added that *udava* means at the same time arbitrary imprisonment for debt and a fine prescribed for that crime, mentioned in the Saint George and Htetovo chrysobulls. Novaković did not take into consideration these charters because when he was writing his paper, they were not edited.

²¹ Solovjev, *Zakonodavstvo Stefana Dušana*, p. 218.

²² Radojčić, *Zakonik cara Stefana Dušana*, p. 113, note 3, comment on article 84 of Dušan's Law Code.

²³ Janković, *Istorija države i prava feudalne Srbije*, pp. 88–89.

²⁴ S. Ćirković, "Udava", *ZFFB* 11.1 (1970), pp. 345–351. His opinion was defended by A. Veselinović, "Još jednom o značenju srednjovekovnog pojma *udava*" ["Once More on the Meaning of the Mediaeval Term *Udava*"], *IG* 1–2 (1988), pp. 129–135.

²⁵ Mara Lazarević Branković (?–12 April 1426) was the eldest daughter of Prince Lazar Hrebeljanović and Princess Militza. Around 1371 she married the mighty lord Vuk Branković, from whom she had three sons: Grgur, Đurađ and Lazar. After the death of her husband, in the period 1402–1412, Mara supported her sons in regaining control of their father's lands, which at that time were annexed to the possessions of her brother and their uncle Stefan Lazarević. In 1412 she negotiated with the help of one of her sisters, Olivera Lazarević, for the reconciliation of Đurad Branković and Stefan Lazarević, which succeeded in 1425–1426. Đurad was appointed successor to his uncle Stefan Lazarević. Not to be confused with her granddaughter Mara Branković or Mara Despina Hatun, also known as Sultana Marija Armerissa, daughter of Đurad Branković and Irene Kantakouzine, who entered the harem of Sultan Murad II of the Ottoman Empire.

²⁶ Ćirković, "Udava", pp. 349–350.

²⁷ Ibid., p. 350.

conviction of each offence. So, *udava* is not self-judgment (*samosud*); on the contrary it is a penalty pronounced by a court, but without trial procedure. The income of the *udava* was collected by the monarch or monasteries, if they had immunity charters from the sovereign himself. Therefore in some charters *udava* was mentioned beside other fines. The Ragusans continually requested the abolition of *udava* because the application of *udava* would mean that they had to appear before Serbian courts, contrary to the judicial immunity that they had.²⁸ However, it is possible that the term *udava* changed its meaning in the 15th century.

Legal proceedings was designated in Dušan's Law Code and in two treaties with Dubrovnik (1349 and 1357) by the wording *da se ište sudom i pravdom* (ΔΔ се ице соудомъ и правдомъ) = "let him sue through the court and by justice". The verb *iskatti*²⁹ means to seek, to pursue, to sue, in legal terminology to launch a lawsuit against a person or entity. An accusation, a formal charge against a person, was called *potvor* (ποτβωρ), and it can be found in two of King Milutin's charters³⁰ and in articles 79, 105, 115, 132, 137, 161, 162, 165 and 181 of the Code. Dušan's Law Code uses the verb *potvoriti* (ποτворити) as well (articles 162, 165, 181), meaning to accuse, to bring a formal charge against a person. These words are no longer in use.

Iskati sudom ("sue through the court") designates litigation, a contest in a court of law for the purpose of enforcing a right or seeking a remedy. An accusatory procedure was applied to both criminal and civil trial procedures. This means that only litigants brought actions and carried the burden of proving the guilt of the party to a lawsuit. The inquisitorial system was an exception, and it is present in articles 145–147, referring to professional brigands and thieves. Article 157 orders that "the *kephales* and patrols shall seek robbers and thieves" (Δ κεφαλιε σтраже да ищъ и гоусаре и тати).³¹

²⁸ The interpretation of Sima Ćirković is today accepted by Serbian historians of the Middle Ages. See M. Blagojević, "Vladar i podanici, vlastela i vojnici, zavisni ljudi i trgovci" ["Sovereign and Subjects, Noblemen and Soldiers, Serfs and Merchants"], in *ISN*, vol. I, p. 387, and A. Veselinović, "Udava", in *LSSV*, pp. 758–759. However, some legal historians still support the opinion of Novaković and Taranovski.

²⁹ In modern Serbian it is obsolete and rarely in use.

³⁰ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 326 and 542.

³¹ Burr, "The Code of Stephan Dušan", p. 530; Novaković, *Zakonik*, p. 123; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

2 Stages of a Trial

2.1 Summons

A summons is a formal notice to the defendant that a lawsuit has begun and that the defendant must file an answer within the number of days set by law or lose the case by default. In early Serbian law the person who served a summons on someone was the plaintiff himself, with an escort of aiders and witnesses, selected among his relatives or neighbours. In the 13th and 14th centuries, the summons became an instrument for commencing a civil action or special proceeding, and it was under the public control of court officials. A summons directs the person to appear in court to answer the charge. Charters promulgated before Dušan's Law Code testify that summons could be signed by the clerk or under the seal of the court. In the Žiča chrysobull we read: "An Archbishop's man shall not be summoned to the King without royal seal, but if an Archbishop's man is at fault, let him be summoned with royal seal" (И да се не поизива архијепискповъ чловекъ къ кралю безъ кралеве печаты, но ако је кому чимъ дължнъ архијепискповъ чловекъ, да се поизива съ кралевомъ печатнио къ кралу).³² There is a similar provision in Saint George's charter: "Hegoumenos shall not be summoned without an Imperial writ" (Игуменъ да се не поизива безъ книге царске).³³ Dušan's Law Code contains further information on summons.

Article 61 says: "if someone has summoned him to the court" (ако га кто позыва на съудъ), and article 89, "if a man summon an offender before the judges" (Кто позовѣ крив'ца предъ судїє).³⁴ According to these articles it is clear that a person who summons is the party who complains or sues (plaintiff) and seeks remedial relief for an injury to rights. However, a person who sends a summons was not only the plaintiff, but a *pristav* as well (articles 56 and 104). A *pristav* could testify that a summons was delivered. To enforce a summons as a type of "public faith" (*fides publica*) in some cases a seal was needed to confirm the authenticity of the summons. The custom of sending a judge's seal (or seal's print) for the purpose of proving the identity of court officials arose in the Frankish Empire and spread later through the whole of Western Europe. A so-called *sigillum citationis* was mentioned at the end of the 10th century in Hungary and Dalmatia, and in Serbia it is known from the Žiča chrysobull (see above). Article 62 of Dušan's Law Code orders: "A greater lord

³² Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

³³ Ibid., p. 327.

³⁴ Burr, "The Code of Stephan Dušan", pp. 210, 215; Novaković, *Zakonik*, pp. 51, 69; *Zakonik cara Stefana Dušana*, vol. II, p. 244; vol. III, pp. 116, 122.

shall not be summoned without the writ of the court, but others with the seal” (Влателинъ вељи да се не позива, без' книге соудине, а прочимъ печать).³⁵ So, article 62 makes a difference between a summons with seal (verbal summons) and a summons with a writ of the court.³⁶ That a summons with a seal was a verbal summons is confirmed by article 56, which says that a nobleman who was summoned with a seal “shall be warned beforehand” (и да мѣ се прѣгје при-позва),³⁷ i.e. he must be told why he was summoned. Summons with a seal was a common rule in Serbia for all subjects, except greater lords who enjoyed the privilege of being summoned with the writ of the court.

Summons could be sent to any individuals. However, article 104, entitled “On officers in the absence of a husband” (О приставѣ безъ мужа), orders: “The officer of the court (*pristav*) shall not call upon a wife when the husband is not at home, nor shall a wife be summoned to court without her husband, but a wife shall give her husband notice when she goes to court. And in that matter a husband is guiltless, until she give him notice” (И да се не најведе приставъ на женѣ къди нѣсть мужа дома. Ни да се позива жена безъ мужа, ни да си дада жена мужъ гласъ да греде на суд. оу том'зинъ мужъ нѣсть кривъ, догда мѣ даде гласъ).³⁸ A widow and a single woman could be summoned alone, and she may designate a representative to litigate for her (article 73, “Of the poor”, О сиротѣ): “A poor person who cannot bring an action nor defend one, let him have an advocate to act for him” (Сирота која нѣсть јака прѣти или штпирати, да даде пѣр'ца кои се штпирати).³⁹ According to article 56, a lord shall not be summoned in the evening, but before dinner (Властѣлињ на вечерин да се не позива, развѣ да се позива прѣгје већда).⁴⁰ The sources do not give information as to what time members of other social classes shall be summoned.

The second part of article 56 orders: “And whosoever shall be summoned by the officer (*pristav*) before dinner and shall not come by dinner time, he is at fault” (и кто боудѣ позванъ прѣгје већда с приставомъ и не прїидѣ на већда, да

³⁵ Burr, “The Code of Stephan Dušan”, p. 210; Novaković, *Zakonik*, p. 51; *Zakonik cara Stefana Dušana*, vol. III, 116.

³⁶ Cf. the early English parliaments to which only the greater lords were summoned by individual writ. Burr, “The Code of Stephan Dušan”, p. 210, comment on article 62.

³⁷ Burr, “The Code of Stephan Dušan”, p. 209; Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

³⁸ Burr, “The Code of Stephan Dušan”, p. 516; Novaković, *Zakonik*, p. 80; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

³⁹ Burr, “The Code of Stephan Dušan”, p. 212; Novaković, *Zakonik*, p. 59; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

⁴⁰ Burr, “The Code of Stephan Dušan”, p. 209; Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

јесть кривъ).⁴¹ This means that the summoned person had to appear at a scheduled hearing the same day. This clause is strange, because a party against whom the suit is brought (the defendant) usually obtains a term of several days (or three weeks) to arrive at the judge's court and to prepare the defence. It is hard to believe that in the conditions of the 14th century any person could appear at court the same day of summons. According to the hypothesis of Taranovski, article 56 determines only the duration of a scheduled hearing and not an interval between summons and hearing. The duration of that interval remains unknown, because the legal sources give no information.⁴²

If the summons was sent on "Palace Court" or by "Court Judge", then a litigation should be disputed immediately. It is clear from article 66, entitled "Of brothers" (*О братењ'цех*), referring to the judicial responsibility of members of a so-called *zadruga* (extended family):

When brothers are together in one house and someone summons them before the court, he shall dispute the case whom the court shall indicate. But if it so be that one of them be at the Tsar's court or at the court of justice and he come and say: "I will submit my elder brother to the court", then let him do so and let him not be driven by force to the court.

Братењ'ци ког с' јајено, оу јединои којкисе, к'здај ихъ кто позов' на дом'ј ког и ѡдь ныих пр'иде, т'зи да ѡтпира; ако ли га ѡбр'ете на двор' царев'ј, али соудиног да пр'иде и рече: дати кю братата стадеега на с'јдь да мој даа сиље да м'ј не ѡтпирати.⁴³

The stubborn refusal of a summons and nonappearance before a court was called *prestoj* or *pečat*, and it was considered as a crime against the judiciary system.⁴⁴ Soldiers from all social classes had a special privilege referring to the summons. According to article 61, entitled "Of returning from the army" (*О пошъстви воинске*): "When a lord returns home from the army, or any other soldier, if he be summoned to the court of justice, let him remain at home for three weeks and then let him go to court" (*К'зди пр'иде власт'елинъ с воинске домомъ, или ког любо воиникъ; ако га кто позыва на соудъ; да боуд' дома, г, неделе,*

⁴¹ Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

⁴² Taranovski, *Istorija*, vol. IV, p. 183.

⁴³ Burr, "The Code of Stephan Dušan", p. 211; Novaković, *Zakonik*, p. 54; *Zakonik cara Stefana Dušana*, vol. III, p. 116.

⁴⁴ See Chapter 20, section 2.

точзи да гређе на съдъ).⁴⁵ Dušan's Law Code does not mention any other valid reason for nonappearance before a court, even a malady.⁴⁶ The *Syntagma* of Matheas Blastares, in Chapter Δ (Δ) - 9, contains a provision ordering that a person who has lost his parents, wife or heirs of his blood (τοῦ τελευτήσαντος τοὺς γονεῖς, ἢ τὴν γυναῖκα, ἢ τοὺς κληρονόμους, οὓμηρ'σαρο ροδιτελε, ιλι ψενογ, ιλι ηασλέδηνη) cannot be summoned (εἰς δικαστήριον ἔλκειν, ηα σούδησθε βλέ- шти) within nine days of a mourning (εἰ δὲ ἐντὸς τῶν ἐννέα ἡμερῶν τολμήσει τινὰ δόμολογίαν .φ.-тихъ дълни прооустава плауев'наго).⁴⁷

Nonappearance before a court of a plaintiff was regulated by article 89 of the Code, entitled "Of summoning offenders" (Ω ποζβανίη қрив'ца): "If a man summon an offender before the judges and then do not come to court himself, but sit at home, the party summoned, if he come at the appointed time before the judges and remain according to the law, is discharged from that debt for which he was summoned, inasmuch as he that summoned him sits at home" (Кто позовѣ қрив'ца прѣд' соудїє позвавѣ а не поидѣ на соудъ, нѣ сѣди дома; шв'зїи кои юсть позванъ ако прїидѣ на рокъ прѣд' соудїє и штетон се по закону, тъзи да юстъ простишъ тогдзїи дльга за кои є быти позванъ, ере ши позвавѣ дома сѣди).⁴⁸ To win a lawsuit it was not sufficient only to appear at the appointed time before the judges, but to remain according to the law (*otstoi se po zakonu*). "Remaining according to the law" (отъстојати се, *perstare*)⁴⁹ or waiting for the plaintiff had to last the whole time determined for the court session—until dinner time (article 56). It seems that on *stanak* (*stanicum*) the waiting time was even longer—until the evening star (до звіезды).⁵⁰ Dušan's Law Code does not

⁴⁵ Burr, "The Code of Stephan Dušan", p. 210; Novaković, *Zakonik*, p. 51; *Zakonik cara Stefana Dušana*, vol. III, p. 116.

⁴⁶ According to Taranovski, *Istorija*, vol. IV, p. 185, it would be hard to believe that malady was not considered as a good reason for nonappearance before a court. It is very probable that it was regulated by customary law.

⁴⁷ Ed. Ralles and Potles, pp. 212–220; ed. Novaković, p. 230. The law was taken from the *Basilika* XXIII, 2, 2.

⁴⁸ Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 69; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

⁴⁹ See Daničić, *Rječnik iz književnih starina srpskih*, vol. II, p. 258.

⁵⁰ Constantine Jireček cited an example of waiting on *stanak* (1447) between Ragusans and the citizens of Trebinje (a town in the region of East Herzegovina, close to Dubrovnik). Radosav Ivanović from Trebinje sued three Ragusans for the murder of his brother. The case had to be disputed on *stanak*, and it was decided that at court there would appear "21 Ragusan villagers and 21 Serbian villagers and two assistants" (.в. Дубровачцехъ кмети а .в. серпецехъ кмети и два прѣстава). Ragusans came to the border and sent an assistant (*pristav*) to the house of Radosav and his brothers. "We were waiting them, according to the law, with the jurors and assistants on the border until the evening star, and neither

quote any good reason for the nonappearance of a plaintiff that could release him from the loss of a lawsuit. However, the Ravanitz transcript in article 76 (89 in Novaković's edition) adds at the end of the text: only if malady retains the one who summoned (кроме аще болез'ни веб'жит звај'шаго).⁵¹

2.2 So-called "Ruka" (*Рука, рука*)

The Serbian word *ruka* (*рука*) literally means an arm or hand. Besides its basic meaning (part of the human arm beyond the wrist), *ruka* probably contains an allusion to some old legal formality in connection with an oath, and Stojan Novaković suggests that it means a guarantor when the first trial fails to reach a decision, in which case recourse was had to compurgators on oath.⁵² In the course of time *ruka* took on a pejorative meaning and the word designated surety (something that makes sure, protects, or gives assurance, as against loss, damage, or default), requested by the summoned person, with a purpose of liberating himself from court proceedings and liability. The Church prohibited such a *ruka*, and it was punishable by a fine, also named *ruka*.⁵³

Ruka was mentioned for the first time with the meaning of surety or protection in the Žiča chrysobull. When someone addressed any enquiry to the ecclesiastical court, it was considered as asking for protection. Such a protec-

Radosav, nor his brother, nor anyone of his brethren, came" (Чекасмо ихъ с поротници и с прѣстави до звѣздѣ на граници по законѣ, а Радосавъ ни брат мѣ ни, тико иихъ братцива не догоше). Therefore the Ragusan court decided that the accused Ragusans should be released from any liability. See Jireček, *Das Gesetzbuch des serbischen Caren Stephan Dušans*, p. 210.

51 Novaković, *Zakonik*, p. 69; *Zakonik cara Stefana Dušana*, vol. III, p. 316.

52 Novaković, *Zakonik*, pp. 196–197; Burr, "The Code of Stephan Dušan", p. 214.

53 In Roman law the word *manus* (a hand) signified power, control, authority, the right of physical coercion, and was often used as synonymous with *potestas*. Many other terms were derived from *manus*, such as: *manus marriage*—by this form of marriage, a woman was transferred from her family to the family of her husband and was said to be "in his hand" (*in manum viri*); *emancipatio* (emancipation) was the act by which a child who was under the power (*manus*) of his father (*patria potestas*) was set at liberty and made his own master; *manumissio* (manumission) was the act of liberating a slave from bondage and giving him freedom (*manus* = hand and *missio* = dismissal); *mancipatio* (*manus* = hand and *capere* = to seize, to acquire, to grip) was a certain ceremony or formal process anciently required to be performed, to perfect the sale or conveyance or *res mancipi* (land, houses, horses, slaves, or cattle); when the successful plaintiff seized the debtor and, after reciting a set style of words, was held to have obtained power over the body of the debtor, it was called *manus injectio* (*manus* = hand and *injectio* = deposition); *mandatum* (*manus* = hand and *dato* = to give) was a contract by which a lawful business was committed to the management of another, and by him undertaken to be performed gratuitously. The examples are numerous and we cannot quote them all.

tion (*ruka*) the *consecrator*, i.e. bishop,⁵⁴ charged to the person who requested it, that is to the one who summoned (Иже по^зивају^т се прв^д светитеље ере под рѣк^и светитељем јем^ат се, то такове рѣке и пе^чати светитеље да узимају^т).⁵⁵ Saint George's chrysobull, Queen Helen's charter on the village Zator, Saint Stephen's chrysobull⁵⁶ and the Dečani chrysobull⁵⁷ mention *ruka* side by side with *pečat* (пe^чатъ), among different fines collected by the Church. In those charters *ruka* designates a judicial tax, paid by a party who requested court surety, and *pečat* a fine for contumacy. The Gračanitza (1321), Dečani (1330) and Htetovo (1343) chrysobulls cite *ruka* beside so-called *posluh* (послоу^х).⁵⁸ As *posluh*⁵⁹ means judicial charge for interrogation of witnesses, in those documents *ruka* would designate the fee for beginning a civil action. However, in the Htetovo chrysobull *ruka* was opposed to the other fines (или је рука, или је послоу^х, или је глоба која либо), but a few lines further *ruka* was quoted as one of the fines collected by the Church (цио се чини глоба на црквов'ныхъ людехъ мала и велика, в'се да оузима светлаја цркви, или је крага, или је рука, или је штбон, или је оудава, или је пртбетон, в'се да јесть црквов'но).⁶⁰ All this testifies that *ruka* had different significances.⁶¹

As the giving of surety (*ruka*) by Church dignitaries and mighty lords subverted the authority of the State-court, Dušan's Law Code in article 84 strictly forbids it: "There shall be no surety in court" (Роук^и на соуд^и да н'весь).⁶² Article 92 of the Code uses the verb *zaručiti* (зару^{чи}ти), derived from the word *ruka*, meaning "to give a surety".⁶³

2.3 *Litigants (parci, пър'ци)*

Dušan's Law Code calls the parties to a lawsuit *parci* (пър'ци) = litigants (articles 161, 175, 181). The person who brings the suit is called *parčija* (пър'чия) = the plaintiff. The person against whom the suit is brought is called *otparčija*

54 The Serbian word is *svetitelj* (Greek ὁ ἄγιος), meaning a bishop.

55 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

56 Ibid., pp. 317, 326, 410, 465.

57 Edited by Ivić and Grković, p. 136.

58 Mošin, Ćirković, and Sindik, *Zbornik*, p. 503; Ivić and Grković, p. 136; *ssa* 13, p. 150.

59 For more on *posluh* see next section.

60 Edited by M. Koprivica, *ssa* 13 (2014), p. 150.

61 See S. Šarkić, "Über die Bedeutung des Wortes *Ruka* (Hand) im serbischen mittelalterlichen Recht", *Annals of the Faculty of Law in Belgrade, Belgrade Law Review, Journal of Legal and Social Sciences, University of Belgrade, University of Vienna*, Year LVIII (2010), no. 3, pp. 203–208.

62 Burr, "The Code of Stephan Dušan", p. 214; Novaković, *Zakonik*, p. 66; *Zakonik cara Stefana Dušana*, vol. II, p. 247; vol. III, p. 122.

63 For more on article 92 see next section.

(*вртпър'чіа*) = the defendant. In the charters from the 13th century we find the expression *suparnik* (*соупарникъ*) = adversary, rival, competitor, which corresponds to the term *litigant* (*parac*), but only in a figurative sense, for Lord God, Mother of God or some of the saints (most often Saint Nicholas, the most popular saint among Serbs). For example, in King Vladislav's charter presented to the monastery of Saint Nicholas on the island of Vranjina (1241–1242) we read: "And if someone has the impertinence to usurp that [privileges of the church] let his adversary be the Lord God, the Most Pure Mother of God ... and Saint Nicholas" (Черћте ли се кто и држњеть потворити се, да моу јесть соупарникъ Божји и прѣчиста мати њего ... и светы Николаје).⁶⁴

Litigants would come before the court for themselves. In the legal sources we have no information about whether they were allowed to send representatives instead. Only members of a so-called *zadruga* (extended family) could represent one another, according to article 66 of the Code, already quoted (see above). However, legal representatives existed for entities, i.e. churches and monasteries. Bishops and hegoumenos acted on behalf of churches and monasteries, as is clear from King Stefan Uroš's Dečanski chrysobull to the monastery of Hilandar (1327), regulating a dispute between the brethren of the monastery and two of the King's noblemen. Hegoumenos Kyr Gervasius appeared as the defender of the monastery's rights (see above).

In connection with litigants was the institution of so-called *navodčija* (*наводъчна*)⁶⁵ = informer, denouncer, squealer, mentioned by several charters. The Dečani chrysobull says that in a case of homicide half of the fine belongs to the church and half to the informer (а за враждоу ... цркви половина а наводъчни половина).⁶⁶ The is a similar provision in Saint Archangel's chrysobull: "And if it occurs that someone kills a church villager, a half of the fine for homicide to the church and half to the denouncer" (И ако се обрѣте на црквномъ чловѣкуо вражда, половина наводъчни, а половина цркви, и враждѣ и гробѣ).⁶⁷ On the manor belonging to Saint Stephen's monastery, there existed a rule that in case of bloodshed the perpetrator had to give three linens to the church and three to the informer (*вкрававивше цркви Г. плат'на а наводъчни Г. плат'на*).⁶⁸ It seems that the *navodčija* came before the court (*ishodio na sud*) beside the plaintiff, as his assistant or maybe instead of the

⁶⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 163. A similar formula can be found in many other charters.

⁶⁵ The word is no longer in use. The modern word is *potkazivač* (*помказивач*).

⁶⁶ Edited by Ivić and Grković, p. 135.

⁶⁷ Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, pp. 112–113.

⁶⁸ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

plaintiff as his representative.⁶⁹ For this reason he received half of the fine. However, a provision ordering that the *navodčija* receive half of the fine for crimes of violence was applicable only on the territories of Old Serbian land. On the territories conquered from Byzantium all fines were reserved either for the State or the Church. The Byzantine system of fine collection was already accepted in the epoch of King Milutin, as is clear from the text of Saint George's chrysobull: "The church shall collect all fines ... and to the denouncer nothing, except what is stolen to him" (всака гловба црквсна јесть ... а наводъчиин ници разгуби иего лице).⁷⁰ Dušan's Law Code does not mention the institute of *navodčija*.⁷¹

In order to ensure that there was no abuse at trial stage, article 84 of Dušan's Code orders: "There shall be ... in court false accusation" (на судѣ да несть опаданія).⁷² The Serbian word *opadania* (false accusation) appears to mean the bringing by the accused of a false accusation against another party in order to divert the attention of the court. *Opadanje* is mentioned twice in Saint George's chrysobull as a fine for false accusation.⁷³ However, the same provision can be found in the second part of the Code, but with much more precision. Article 161, "Of jurors" (О поротницих), reads:

When litigants are suing in court and pleading their own case and the defendant is pleading his, he is not permitted falsely to accuse the plaintiff, neither of breach of faith, nor of any other matter, but only to defend his case. But when the trial is finished, if he have anything [to say], let him discuss it with him before my Imperial judge, but he shall not be believed in anything until the case is finished.

На судѣ кои се пърци соудѣ и пре за свою причю, и виши штпър'чіа за цио га прїи, да несть вол'ни штпър'чіа глаголати потвор'ни на в нога зи пър'чию, ни за не вѣро, ни за ино дѣло; развѣ да моу штпира; а къдъ съврьши соудѣ, ако цио има потомъ да глаголи съ нимъ, прѣда соудїами царства ми; а да моу се не вѣроује ни оу чемъ цио глаголи догда мѹ се исправи.⁷⁴

⁶⁹ Taranovski, *Istorija*, vol. IV, p. 189.

⁷⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

⁷¹ See R. Mihaljić, "Navodčija", in *LSSV*, p. 425.

⁷² Burr, "The Code of Stephan Dušan", p. 214; Novaković, *Zakonik*, p. 66; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

⁷³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

⁷⁴ Burr, "The Code of Stephan Dušan", p. 531; Novaković, *Zakonik*, p. 127; *Zakonik cara Stefana Dušana*, vol. III, p. 146.

This article forbids the defendant from attempting to discredit the plaintiff before the evidence is heard and a verdict obtained.

Article 167, entitled “Of litigants” (Ѡ пър'цѣхъ), gives obligatory instructions to judges on how to estimate the veracity of sworn statements of the parties to a lawsuit: “When litigants come before the Imperial Court, those words shall be believed which they first utter, for such are to be believed, and on them shall judgment be given, but on the last words, nothing” (Пър'ци кон исходе на соуд царства ми, да којо речь оузд'говоре оу пръвънъ, тезиин речи да соу в'брояне, и тем'зиин речемъ да се соудиин, а посл'едниимъ ницио).⁷⁵

2.4 *Days for Appearance in Court (Dies)*

Roman law knew for *dies fasti* and *dies nefasti*, later *dies iudiciari et feriati*. *Dies fasti* in Roman law were days on which the courts were open, and justice could be legally administered, i.e. days on which it was lawful for the *praetor* to pronounce (*fari*) the “three words”: *do, dico, addico*. Hence they were called “triverbal days”, answering to the *dies iuridici* of English law. *Dies nefasti* were days on which the courts were closed, and it was unlawful to administer justice, answering to the *dies non iuridici* of English law.⁷⁶ With the triumph of Christianity, the days for appearance in court were designated according to the Christian calendar. So, Matheas Blatares introduced in his *Syntagma* two great chapters speaking on the Christian calendar: II-7, “On Holy Pascha”, i.e. Easter Sunday (Περὶ τοῦ ἁγίου Πάσχα, Ο светои Пасхъ), and T-5, “On Holy Lent and the customs related to it” (Περὶ τῆς ἁγίας τεσσαρακοστῆς, καὶ τῶν ἐν αὐτῇ τελουμένων ἔθων, Ο светои .м.-тници и иже въ ние съгрувашањемъхъ обичаи).⁷⁷ Lawsuits were forbidden on Sundays, seven days before and after Easter, and on three other holy days (feasts). Criminal trial procedures were not allowed during the Lenten Fast. Among Serbian legal sources only treaties with Dubrovnik order that days for appearance in *stanak* are from Saint Michael's day until Saint George's day (see above). Other legal documents, including Dušan's Law Code, do not fix days for appearance in court.

⁷⁵ Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, p. 132; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

⁷⁶ *Black's Law Dictionary*, p. 455.

⁷⁷ Ed. Ralles and Potles, pp. 404–428, 456–473; ed. Novaković, pp. 426–453; 485–500.

3 Types of Evidence

Evidences are any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court as to their contention.⁷⁸ Serbian mediaeval law deals with several evidences.

3.1 So-called "Lice" (*corpus delicti*)

The age-old Slavonic word *lice* (лице) denotes the body of a crime (*corpus delicti*), the material substance upon which a crime has been committed, e.g., the corpse of a murdered man, the charred remains of a house burned down or a stolen thing. In a derivative sense, it is the objective proof or substantial fact that a crime has been committed. Beside that significance, *lice* also means face, countenance. Such a meaning prevails in modern Serbian, but it can be found in mediaeval documents too. For example in the chrysobull of the Great Župan Stefan Nemanja, presented to the monastery Studenitza (1183–1190), we read: “and not to see the holy face of God” (да не љубрить срѣтъ лица Божїа).⁷⁹

Lice in the meaning of *corpus delicti* is mentioned in Saint George's charter⁸⁰ and articles 92, 149 and 180 of Dušan's Law Code. There are also several expressions derived from the term *lice*: 1) *obličenje* (обличенїе) = “proof” (articles 149, 150); 2) *oblični* (обличнїи) = “taken in the act” (article 149); 3) *oblično* (облично) = “detected”, “recognized” (article 109); 4) *polični* = an adjective designating the material substance upon which a crime has been committed: for example “On recognized cattle, horse or any other thing” (О поличномъ скоте, или конѧ, или што градѣ) in the title of article 92.⁸¹

3.2 So-called "Svod" (*Сводъ*)

Svod (from the verb *svesti*, *свести* = reduce to, bring down to, boil down to, divert) means a special process of inquiry, known in Serbian, Russian, Czech and Polish law under the same name (*свод*, *svod*, *zuod*), in cases of disputed ownership (*actio rei vindicatio*, available to the owner against a person in possession of the stolen goods for their recovery) and *actio furti* (an action founded upon theft), especially of livestock. The accused party was called upon to give an account of his possession of the animal, and from whom he had originally

⁷⁸ Black's Law Dictionary, p. 555.

⁷⁹ Mošin, Ćirković, and Sindik, *Zbornik*, p. 62. Cf. pp. 332, 436, 457, 537, 540.

⁸⁰ Ibid., pp. 326, 327.

⁸¹ Novaković, *Zakonik cara Stefana Dušana*, vol. III, p. 124.

acquired it; that person was then sent for and interrogated, and so on, until the whole history of the animal was traced back, and the existence, or otherwise, of a theft finally proved.⁸²

In Serbian 14th-century legal sources *svod* was used as evidence in cases of the crimes of larceny and robbery, especially of livestock (articles 180 and 193 of Dušan's Law Code).

Article 180, entitled "Of stolen goods" (Ω гоушені), orders: "If anyone find anything robbed or stolen or taken by force, let each party in the case give evidence [i.e. *svod*]. If anyone buy anything, either in the territories of my Empire or in another land, let him give evidence [*svod*] touching it, and if he produce no evidence [*svod*], let him pay according to the law" (Аще кто ѿу хвати гоушено, или крадено лице мъ, или силомъ оу зето, въ сакы въ томъ да да сводъ; аще кто боудѣ коупиль где любо или оу земли царства ми, или оу инои земли царства ми, винъ да да въ томъ сводъ; аще ли не да свода, да плаакіа по закону⁸³). It is significant that article 180 prescribes a special process of inquiry (*svod*) even if a thing was bought "in another land", while the *Russkaya Pravda, Vast Version* in article 39 explicitly says that *svod* is allowed only in its own town, but not in a foreign land (А из своего города въ чюжу землю свода нетуть).⁸⁴

Article 193, runs as follows: "In inquisitions [*svod*] about horses and other acquisitions, or in any matter of justice, what is robbed or stolen, let an inquisition be made, or let him pay everything sevenfold. But if he say 'I bought in a foreign land from so-and-so', let the jurors release him from the fine; and if the jurors do not release him, let him pay a fine" (И сводъ кон'скыи и иных добытъкъ или конъ годѣ прав'да что се гоуси или оукраде, томъ да дада сводника; да плати въ сако самосед'мо. Ако ли рече купиъхъ оу того зем'ли, да шираве доушевници вът глобе; ако ли га не шираве доушев'ници, да плати з' глобомъ).⁸⁵

It is clear that article 193 has changed the provision from article 180, which provides *svod* even in a foreign country. According to article 193 *svod* in a foreign land in doubtful cases was replaced by so-called *duševnici* (sworn arbitrators or valuers).⁸⁶ It is hard to explain such a correction, but it seems that *svod* was applied only in the territory of Serbia, because in foreign countries it was very difficult to realize it. This is supported by article 132, which prescribes that for

⁸² "The Anglo-Saxon codes are full of similar efforts to deal with cattle-rustlers". Burr, "The Code of Stephan Dušan", p. 535, comment on article 180.

⁸³ Burr, "The Code of Stephan Dušan", pp. 534–535; Novaković, *Zakonik*, p. 139; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

⁸⁴ Ed. Yushkov, p. 112.

⁸⁵ Burr, "The Code of Stephan Dušan", p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol. III, p. 276.

⁸⁶ Cf. article 76 of the Code.

legally acquired objects in a foreign land “the dispute shall be settled before a jury according to the law” (да га упради порота по закону). Two treaties with Dubrovnik (1349 and 1357) contain a similar order: *svod* shall not be applied in the case of a horse bought in a foreign land; only the oath of the buyer and one of his friends would be sufficient (а кои любо тръговъц доведе коне купив из търгие земълѣ а познаю се, да се къльне тъзи тръговъц самъдрѹги, ере га юсть купилъ търгиен земъли, и не зъна тати и гѹсара да не даде за този свода).⁸⁷

In the interest of freedom of trade, Tsar Dušan's and Tsar Uroš's treaties with Dubrovnik (20 September 1349 and 25 April 1357) introduced a special privilege for merchants. If a Ragusan merchant had bought a horse in a market-town and paid a customs tariff and someone else laid claim to that horse, the customs officer had to guarantee under oath that the merchant bought the horse and is not a thief. In that case an inquiry (*svod*) would not be required. But if the purchase was performed without the presence of a customs officer, the buyer had to give evidence (*svod*) regarding from whom he had originally acquired the horse (И кои тръговъц купи коня на тръгъ и плати за нь царинъ да рече цариникъ дѫшомъ ере юсть тогази коня купилъ и за нега платиъ царинъ а тати не зъна да мѣ за този свода несъть, ако ли га такози не упради цариникъ да да сводъ Ѹкога юсть купилъ).⁸⁸ Later, Prince Lazar's treaty with Dubrovnik (9 January 1387) contains even more information: if a Ragusan merchant bought a horse, and that horse was captured, either by a Serb or by a Saxon, the Ragusan had to swear, saying “my horse was not stolen or robbed”, that he does not know of any larceny or robbery, and that he bought the horse according to the law. In that case the damaged party could not demand a *svod* (и ако кои Дѹбровчанин купи коня и иногази коня Ѹхвати Сръбинъ или Сасинъ и рече Ѹкраден ми ю или гѹшень да се ѿклъне Дѹбровчанин како ние светъца ино-мѹзи коню ни гѹсе ни тат’ве, нѫ га ю купилъ).⁸⁹

3.3 *Ordeal (Mediaeval Latin Ordalium)*

The most ancient species of trial in almost all mediaeval laws was peculiarly distinguished by the appellation of *iudicium dei* or “judgment of God” (Serbian *božji sud*, *божји суд*), it being supposed that supernatural intervention would

87 *ssa* 11 (2012), p. 39, and *ssa* 12 (2013), p. 82.

88 *ssa* 11 (2012), p. 39, and *ssa* 12 (2013), p. 82.

89 Mladenović, *Povelje kneza Lazara*, p. 192. On *svod* see Novaković, *Zakonik*, pp. 254–255; S. Novaković, “Svod Dušanova zakonika u narodnoj pesmi” [“Dušan Law Code's *svod* in Folk Songs”], in *Jagić-Festschrift—Zbornik u slavu V.Jagića* (Berlin 1908), pp. 61–64; Tarantovski, *Istorija*, vol. IV, pp. 193–194; Solovjev, *Zakonik cara Stefana Dušana*, pp. 320–321, 329–330, and S. Šarkić, “Svod”, in *LSSV*, pp. 658–659.

rescue an innocent person from the danger of physical harm to which he was exposed in this type of trial.⁹⁰ In Byzantine law there were two major kinds of judicial ordeal: single combat and holding a red-hot iron. However, ordeal was considered in Byzantium a barbaric practice and was probably borrowed from Westerners (either before or after 1204).⁹¹ In Serbian mediaeval law the ordeal was of two sorts—either fire ordeal or water ordeal.

The ordeal by fire or red-hot iron, which was performed either by taking up in the hand a piece of red-hot iron, of one, two, or three pounds weight, or by walking barefoot and blindfolded over nine red-hot ploughshares, laid lengthways at unequal distance.⁹²

Among Serbian sources the ordeal by red-hot iron (*železo*, *железо* = iron) is only mentioned by article 150 of Dušan's Law Code, entitled "Of thieves" (О тата): "If anyone sue a brigand or thief in the courts and there be no proof, then shall he undergo ordeal by iron, as I have decreed. Let them take to the doors of the church from the fire and place it upon the Holy Table" (И ако ктo поиже соудомъ гоусара и тата, а не боудѣ въблоченїа да имъ юсть вправданїе жељезо цио є положило царство ми; да га оузымаю оу врат'ех црксовныхъ вт вгніа, и да га постави на светом трапезе).⁹³

The procedure in Ordeal by Hot-Iron was as follows: a piece of iron was heated in the doorway of a church and the accused was obliged to lift it from the fire and place it on the Holy Table. If he succeeded in doing this without hurting himself he was declared innocent and discharged, but if he burnt his hands, it was deemed that God had declared him guilty. The effect was obviously to leave the decision in the hands of the priests.⁹⁴

However, the Code provides ordeal by hot iron only in the case of a person suspected to be involved in a crime of larceny or robbery.

The water ordeal could be of hot or cold water, but Serbian legal sources mention only the hot-water ordeal, called *kotao* (literally "cauldron"), which was performed by plunging the bare arm up to the elbow in boiling water, and escaping unhurt.⁹⁵ The ordeal of hot water (*kotao*, "cauldron") was men-

⁹⁰ Black's Law Dictionary, p. 1095.

⁹¹ See A. Kazhdan, "Ordeal", in ODB, p. 1531.

⁹² Black's Law Dictionary, p. 1096.

⁹³ Burr, "The Code of Stephan Dušan", p. 527; Novaković, *Zakonik*, p. 117; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

⁹⁴ Burr, "The Code of Stephan Dušan", p. 527.

⁹⁵ The cold-water ordeal was performed by casting the person suspected into a river or pond

tioned for the first time in Saint George's charter: the chrysobull forbids a hot water ordeal to the villagers from Saint George's manor for any accusation (*Δα нѣсть котла людемъ Светаго Георгија ... ни оу комъ потворѣ*).⁹⁶ The same prohibition was repeated in King Dušan's chrysobull presented to the monastery of Hilandar, from 6 May 1332 (*и котла да имъ нѣсть*).⁹⁷ However, Dušan's Law Code provides the "cauldron", but confines it to the common people in article 106, entitled "Of a lord's servants" (*ω дѣоранѣхъ*): "If any servant of a lord do any crime, if he be the son of a fief-holder⁹⁸ let him be judged by his father's household by jury; but if he be a commoner, let him be taken to the cauldron" (*Дѣоранѣ властѣшески, ако Ѹчны које зло кто шт нихъ; кто воудѣ пронїаревись, да га шпрахѣ отъчина дроужина поротомъ; ако ли юестъ себѣръ да хыти оу котъль*).⁹⁹

In spite of the provision of article 106, three of Tsar Dušan's charters promulgated after the Law Code (to *anagnost*¹⁰⁰ Dragoje, 21 May 1349, and two chrysobulls presented to the monastery of Hilandar, 2 and 17 May 1355) strictly prohibited the "cauldron" (*И котла на им нѣ ...; и котла да имъ нѣсть ни за ѹедни судь*).¹⁰¹ However, Saint Argangel's chrysobull forbids the "cauldron" in a case of mixed trials between the monastery's serfs and the inhabitants of a county, but it keeps it for mutual litigations between church people (*И котла Аргангеловѣмъ людемъ да нѣст съ инѣми жоуплани, развѣ мегю собомъ въ Аргангелѣ*).¹⁰²

Unlike with the ordeal by red-hot iron, the Serbian sources do not spell out for what type of case the hot-water ordeal was applied. The formulation that we find in legal acts is very broad: there shall be no "cauldron" for any accusation, for any trial, for any crime. It seems that "cauldron" was not in use only in criminal cases, but in civil lawsuits as well.

According to the interpretation of articles 102 and 131 of the Code, Stojan Novaković thought that in mediaeval Serbia there existed ordeal by combat

of cold water, when, if he floated without any action of swimming it was deemed evidence of his guilt; if he sank, he was acquitted. *Black's Law Dictionary*, p. 1096.

96 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

97 Edited by V. Petrović, *ssa* 13 (2014), p. 7.

98 "The son of an official" in Burr's translation ("The Code of Stephan Dušan", p. 517).

99 Burr, "The Code of Stephan Dušan", p. 517; Novaković, *Zakonik*, p. 81; *Zakonik cara Stefana Dušana*, vol. III, p. 128.

100 *Anagnost* (from Greek ἀναγγέστης = lector or reader), a cleric in the first of the minor orders of the Eastern Church who reads lessons aloud from the Epistles or the Old Testament in the liturgy.

101 *ssa* 15 (2016), p. 48; *ssa* 11 (2012), pp. 66, 74.

102 Edited by Mišić and Subotin-Golubović, *Svetoorhanđelovska hrisovulja*, p. 112.

(judicial duel), the oldest type of ordeal.¹⁰³ We shall examine those articles. Article 102, entitled “On cautionary deposits” (Ѡ ѹзданіюмъ), reads: “There shall not be deposited any caution by any man at any time. And whosoever shall so do, he shall pay sevenfold” (Оузданіа да нѣсть никомъ ница никакъва; кто ли се поѹзда за чю, да плати самоседъмо). Article 131, entitled “Of brawling” (Ѡ свадѣ), reads: “In the army there shall be no brawling. If two quarrel let them fight a duel and no other soldier shall help them. And if anyone go to succour or help, let him be flogged” (На воисцѣ свадѣ да нѣсть; ако ли се свадита дѣа, да се вѣста, а инь никто ѿдь воиницъ да имъ не поможе; ако ли кто потече и поможе на порвицъ, ѿнизи да се бїю).¹⁰⁴ The Serbian word translated as “cautionary deposit” is *uzdanije*, and Novaković understood it as judicial duel; according to him, article 102 forbade ordeal by combat, and that prohibition was confirmed in article 131.¹⁰⁵

However, the majority of modern scholars have rejected Novaković's interpretation, because there is no proof that *uzdanije*, a word that has remained until today a puzzle,¹⁰⁶ means judicial duel. Besides, article 131 does not treat

¹⁰³ Ordeal by combat (judicial duel) took place between two parties in a dispute, either two individuals or an individual and a government or other organization. They, or, under certain conditions, a designated “champion” acting on their behalf, would fight, and the loser of the fight or the party represented by the losing champion was deemed guilty or liable. Champions could be used by one or both parties in an individual versus individual dispute, and could represent an individual in a trial by an organization; an organization or state government by its nature had to be represented by a single combatant selected as a champion, although there are numerous cases of high ranking nobility, state officials and even monarchs volunteering to serve as champion. Combat between groups of representatives was less common but still occurred.

¹⁰⁴ Burr, “The Code of Stephan Dušan”, pp. 516, 522–523; Novaković, *Zakonik*, pp. 79, 99; *Zakonik cara Stefana Dušana*, vol. III, pp. 126, 136.

¹⁰⁵ Novaković, *Zakonik*, pp. 206–208.

¹⁰⁶ The expression *uzdanije* (ѹзданіе) was mentioned only once in Dušan's Law Code (article 102), and in the other Serbian legal sources was unknown. The word provoked different interpretations. P.J. Šafarik translated the title of article 102 as “vom Hehlen”, and in note 71 he wrote: “Verzweifeltes Wort! ... Niemand versteht diesen Paragraphen, weder von den Serben, noch sonst von slaw ... Ich übersetze daher aufs Gerathewohl: hehlen, verhehlen eine anvertraute (gestohlene) Sache” (Kucharski, *Antiquissima monumenta*, pp. 188, 220). Maciejowski, *Historya*, vol. vi, p. 365, translated the title of article 102, as “On Agreements Prohibited by Law”, and Daničić, *Rječnik iz književnih starina srpskih*, vol. I, p. 168, article въздание, wrote that in Ragusan acts *uzdanije* means *fiducia*, which has the same significance as *uzdanije* in Dušan's Law Code. Later, Šafarik has shown that *uzdanije* existed in old Czech law, under the name *wzdan*, where it was chiefly invoked for material damage of a rural nature, such as felling timber, damage by straying cattle, poaching and land dispute. The Serbian word *uzdanije* is the phonetic equivalent of the Czech word (P.J. Šafarik, “O wzdán”, *Časopis Českého Museum* XVIII [Prague 1844], pp. 384–399).

the matter of the ordeal by combat, but rather a duel provoked by a quarrel between two soldiers.¹⁰⁷ It seems that judicial duel did not exist in mediaeval Serbia.¹⁰⁸

3.4 *Judicial Oath* (*օρκος*, *zakletva*, *заклетва*, *ροτά*)

An oath is any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. A judicial oath is one taken in some judicial proceedings or in relation to some matter connected with judicial proceedings, taken before an officer in open court, as distinguished from a “non-judicial” oath, which is taken before an officer *ex parte* or out of court.¹⁰⁹ Slavonic laws only mention the judicial oath (*sacramentum*,

Novaković (*Zakonik*, pp. 206–207) accepted Šafarik's explication and illustrated it with an example from the Czech law code the *Maiestas Carolina* (1350), promulgated by Holy Roman Emperor Charles IV, Dušan's contemporary. According to Novaković and Šafarik, *uzdanije* was a typical Slavonic institution. However, H. Jireček found traces of *uzdanije* in Homer's *Iliad*, Book XVIII, 580–585:

And the people massed, streaming into the marketplace,
where a quarrel had broken out and two men struggled,
over the blood-price for a kinsman just murdered.
One declaimed in public, vowing payment in full—
the other spurned him, he would not tat a thing—
so both men pressed for a judge to cut the knot. (English translation by R. Fagles [New York 1990], p. 483)

Jireček also wrote that in ancient Greek law this institution was called παρακαταβολή (*deposita in litis aestimationem pecunia*), in Roman law it was called *sacramentum*—a wager (under the *Legis actio sacramento*)—plaintiff and defendant staked a fixed amount of money—*summa sacramenti*; the judgment decided which of the wagers was just, and in German law *die Wette* (H. Jireček, *Srovnalost starého práva slovanského se starým právem hellenským, římským a germanským, Razpravy z oboru historie, filologie a literatury* [Vienna 1860]). J. Kapras, *K dějinám českého zástavního práva* (Prague 1903), pp. 6–11, separated *vzdání* from judicial duel and defined it as a judicial wager with elements of pledge. According to Taranovski, *Istorija*, vol. IV, p. 191, such an interpretation caused difficulties: if *uzdanije* was *sacramentum* (a wager) how could it be realized in spite of its prohibition prescribed by the second part of the article 102 (“And who so shall so do, he shall pay sevenfold”)? He added that he must acknowledge that *uzdanije* remained for him enigma. A. Jovanović, *Prinosci za istoriju starog srpskog prava* [Contributions for the History of Old Serbian Law], vol. II (Belgrade 1900), p. 16, expressed the opinion that *uzdanije* represented a criminal act, a part of self-will or self-judgment, but he failed to explain it adequately. Solovjev, *Zakonik cara Stefana Dušana*, p. 260, thought that Šafarik's argumentation was the closest to the truth, and that this custom was in benefit of the rich nobility, who could deposit great amounts of money as a wager.

¹⁰⁷ Taranovski, *Istorija*, vol. IV, p. 197.

¹⁰⁸ See S. Ćirković, “Božji sud”, in *LSSV*, pp. 52–53.

¹⁰⁹ *Black's Law Dictionary*, p. 1071.

iusiurandum), using an old term, *rota* (*poma*, *рота*). The word survives in Czech and Polish, denoting a text of an oath.¹¹⁰ An oath was used in criminal and civil cases as well, and it was taken either by the plaintiff or defendant, when there was no other evidence. The essence of the statements was a series of solemn and formal words, any error in which could result in the dismissal of the action. Oaths were considered as a type of judgment of God: God would not allow a person whose oath was false to pronounce it correctly. So, if a litigant did not want to take an oath confirming his words, or did not take an oath validly, the court did not trust to his attestation. Contrary to this, with one who took an oath in the right way, the court recognized it as truthful.

In the Serbian legal documents we have information on oaths taken in the treaties with Dubrovnik. The example when a plaintiff takes an oath can be found in two treaties from 1349 and 1357: "And wherever a Ragusan gives his property [in deposit] to any merchant, and this person denied [that he had received a thing] from him, a Latin has to swear and it must be trusted to him, according to the law of my imperial parent and progenitor" (И где комъ даје Дубровчанинъ свои добиткъ, комъ где тъгов'цъ, тере мъ од нега Ѹ въхъ Ѹдришь, да се кълнът Латининъ за този да въде вѣрованъ, по законъ, како съ имали Ѹ родителъ и прародителъ царства ми).¹¹¹ In Prince Lazar's treaty with Dubrovnik (1387), the formula is a little bit different: "And if a Ragusan gives his property to a Serb in good faith, and the Serb said: 'You did not give it to me', the Ragusan has to say by his good faith and soul that he gave him a property, and [the Serb] has to pay him" (и цю дада Дубровчанинъ ... свое имание Ѹ вѣројако мъ за ... Сръбинъ и рече неси ми даљ, да рече Дубровчанинъ своите вѣромъ и даљомъ, цю мъ је даљ добитка, да мъ плаќа).¹¹² The wording "to say by his good faith and soul" undoubtedly means "to take an oath", "to swear". So, we have a case when a plaintiff takes an oath, and his oath was considered as real evidence.

A case when a defendant takes an oath was already described in section 2 of this chapter, dedicated to the *svod*. Oaths taken in mutual lawsuits between Serbs were also mentioned in some documents. A list of estates of Htetovo monastery (1343) says that a bishop from Prizren, George Markoush, took an oath from elders and noblemen (Изакле их јепископъ призренъски Георгий Маркоушъ все стадре и властеле).¹¹³ An oath of "honest men" (да се закльноу страш-

¹¹⁰ Mažuranić, *Prinosi*, pp. 1261–1262.

¹¹¹ SSA 11 (2012), p. 39, and SSA 12 (2013), p. 82.

¹¹² Edited by Mladenović, *Povelje kneza Lazara*, p. 193.

¹¹³ Slaveva, Miljkovik-Pepek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 290.

нимъ заклетием) is mentioned in King Stefan Uroš's III Dečanski chrysobull to the monastery of Hilandar (1327).¹¹⁴ In a document concerning the boundaries in the region of Strumitsa (1376), we read that the bishop of Strumitsa, Daniel, took an oath from the noblemen of Strumitsa, and they swore by "frightful oaths" where the boundaries were (смѣрении епископъ Струмички Даниил заклех боларе града Струмице ... И они се заклеше страшним заклетием вси въ едина, и оуказаше).¹¹⁵ The oath was also mentioned in two documents from the year 1454 referring to the verdicts of Despot Đurađ Branković relating to the boundaries of Hilandar monastery.¹¹⁶

The *Syntagma* of Matheas Blastares contains several provisions referring to oaths, mostly taken from the *Basilika* and *Procheiron*. First, Chapter Δ (Δ) - 10 says that witnesses, before they start testimony, must take an oath (Δεῖ τοὺς μάρτυρας πρότερον ὀμνύναι, πρὶν ἡ μαρτυρήσωσι, Ποδοβαλέτη σεβέδετελίεμ πρύτνιε κλετι σε, πρέβηδε δαже не се бдетьте л'ствоють).¹¹⁷ There are further details in Chapter E-32, entitled "On perjury" (Περὶ ἐπιφράξις, Ο κλετωπρέστουγπλεни):¹¹⁸

- It is forbidden to bishops and clerics, to the *anagnost*, to swear ('Επὶ ἐπισκόπων καὶ κληρικῶν μέχρι καὶ ἀναγνωστῶν, τὸ ὄμνυναι ὅλως κεκώλυται, Πρι επισκοπέχη и причтннцвхъ да же и до чьтицвхъ еже клемти се отноудь въз бранен'но юсть).
- Nobody shall be punished who swears to God, because God shall punish false swearing. If someone, from zeal, swears to the Emperor, it shall be forgiven (Οὐδεὶς κατὰ Θεοῦ ὄμόσας κινδυνεύει· ἵκανὸν γάρ ὁ ὄρκος τιμωρὸν ἔχει τὸ θεῖον· ὃ δὲ κατὰ βασιλέως ὄμόσας κατὰ τινὰ θεμότητα συγχωρεῖται, Νикто же въ Бога кльни се въдou приемлюетъ; довоl'no бо клемта томлиен'е имать вожество; царемъ же кльны се по нѣкои топлотѣ пращаюетъ се).¹¹⁹
- In doubtful cases, a judge usually proposes an oath and upon it delivers sentence ('Εν τοῖς ἀμφιβόλοις εἴωθεν ὁ δικαστὴς ἐιφέρειν δόρκον, καὶ οὕτω ψηφίζεσθαι, Въ имоушихъ соумнїн'е овѣчъ соудїа приносити клемту, и тако соудитї).¹²⁰
- Each of the required oaths shall also be respected when someone swears in his religious faith. Swearing in another religion, which is not allowed by law, shall not be accepted (πᾶς γάρ θεμιτὸς ἐξ ἐπαγωγῆς ὄρκος φυλάττεται, καὶ ὃν τις ὄμόσῃ κατὰ τὴν ἴδιαν θρησκείαν· ὃ δὲ κατὰ ἀδοκίμου θρησκείας γεγονὼς ὄρκος

¹¹⁴ SSA 3 (2004), p. 5. This case was already described in Chapter 26, section 5.

¹¹⁵ Solovjev, *Odabrani spomenici*, p. 171.

¹¹⁶ Ibid., pp. 214, 216.

¹¹⁷ Ed. Ralles and Potles, p. 228; ed. Novaković, p. 240. Cf. *Basilica XXI*, 1, 23.

¹¹⁸ Ed. Ralles and Potles, pp. 288–293; ed. Novaković, pp. 302–308.

¹¹⁹ *Basilika XXII*, 5, 44–45.

¹²⁰ *Basilika XXII*, 5, 31.

оù фулáттетаи, в'сака бо прикладна оть наведенїа клетва съхраняють се, и еюже кто кльнетъ се въ свою в'брону; въ неискоусною же в'бру быв'шіа клетва не хранить се).¹²¹

- He who took his Gospel oath in the church, either according to the judge's decision or on the request of the defendant, and later on it was found that his oath was false, let his tongue be cut off ('Ο ἐκ δικαστικῆς ψήφου, ἢ ἐξ αἰτήσεως τοῦ ἀντιδίκου δρκον ὑπέχων ἐπ' Ἐκκλησίας, τῶν ὀχράντων ἐφαπτόμενος εὐαγγελίων, ἐπιορκεῖν δὲ μετὰ ταῦτα ἐλεγχθεῖς, γλωσσοκοπείσθω, Ιήκε οτύ σούδιναργο σούδα, οιλι οτύ испрошенија соупърнича клетвѹ сътворь въ цркви, прѣбистихъ касає се еваггелїи, прѣклънъ же се по сихъ обличенъ бывъ, езыкъ да оурѣжеть се ему).¹²²
- An oath is a word that confirms the truth ('Ορκος ἔστι λόγος πιστούμενος δι' έαυτοῦ τὴν ἀλήθειαν, Клетва юстъ слово оубѣраюштее собою истину').¹²³

Dušan's Law Code does not speak on oaths as evidence. Only article 151 says that "the priest in robes shall swear them [jurors]". But we shall discuss juries and jurors elsewhere.

3.5 Compurgators or Conjurators (*kletvenici*, клетвеници, *поротници*)

Compurgators or conjurators were neighbours of a person accused of a crime, or charged as a defendant in a civil action, who appeared and swore that they believed him in his oath. So, compurgation was a method of trial whereby a person charged with a crime could be absolved by swearing to innocence and producing a number of other persons willing to swear that they believed the accused's declaration of innocence.¹²⁴ The modern Serbian word for a compurgator is *kletvenik* (plural *kletvenici*) = "one bound by an oath", coming from *zakletva* (заклемва) = "an oath". As the oldest expression for an oath was *rota* (*poma*, рота), the sources use for compurgators the term *porotnici* (*поротници*, поротници) = "jurors", "members of jury", and *porota* (*поромта*, порота) = "a jury", but the *porota* was not a jury in the English sense of the word today.¹²⁵ Other terms that the Serbian legal documents use for compurgators are *starinici* (*старинци*, старин'ници) = "honest men", *starci* (*старци*, стар'ци) = "elders", *duševnici* (*душевници*, душевници) = "valuers" and *svedoci* (*сведоци*, свѣдоци) = "witnesses". An oath of a plaintiff with five compurgators, called *svedoci* (literally "witnesses"), was very well known in Slavonic law under the title *samo-šest*

¹²¹ *Basilika* XXII, 5, 3.

¹²² *Procheiron* XXXIX, 46.

¹²³ Ed. Ralles and Potles, pp. 292–293; ed. Novaković, pp. 307–308.

¹²⁴ *Black's Law Dictionary*, p. 288.

¹²⁵ See section 4.

(само шест, literally “only six”): it could be found in article 10 of the Law Code of Vinodol, or Vinodol Statute (1288),¹²⁶ article 65 of the Statute of Poljica (1440)¹²⁷ and the judicial protocol from Srebrenitsa, referring to the dispute concerning larceny between Ragusans and men of Bosnian Duke (Herceg)¹²⁸ Stefan (10 November 1457).¹²⁹

3.6 Witnesses (*μάρτυρες*, *svedoci*, *сведоци*, *свѣдоци*)

In general, a witness (Latin *testis*, Greek *μάρτυς*) is one who, being present, personally sees or perceives a thing and one who is called to testify before a court; a person whose declaration under oath is received as evidence for any purpose, whether such a declaration be made on oral examination or by deposition of an affidavit.¹³⁰ In the Serbian legal documents there are three terms to denote a witness: 1) *svedok* (*сведок*, *свѣдокъ*, plural *svedoci*, *сведоци*, *свѣдоци*), a word used in modern Serbian as well; 2) *posluh* (*послух*, *послоухъ*, plural *poslusi*, *послуси*, *послоуси*, an obsolete word); and 3) *svedetelj* (*сведетель*, *свѣдѣтель*, plural *svedeteli*, *сведемељи*, *свѣдѣтељи*, an obsolete word as well).

Svedok, in plural form *svedoci* (witnesses), was mentioned only once: King Milutin's charter presented to the Roman-Catholic church of Holy Virgin Ratačka (1306) has a reference to two witnesses, Drago and Paul (и два свѣдока Драго и Павља; et doi *testimonii* *Dragan et Pollo*).¹³¹ However, the word *svedok* more frequently denotes a compurgator.

¹²⁶ Edited by L. Margetić, *Iz Vinodolske prošlosti, pravni izvori i rasprave* [Legal Sources and Treaties from Vinodol's Past] (Rijeka 1980), p. 120. The Law Code of Vinodol, or the Vinodol Statute, is one of the oldest law texts written in the Chakavian dialect of Croatian. It was written in the Glagolitic alphabet in 1288, but preserved in a 16th-century copy. The Vinodol Statute represents an agreement between the people of Vinodol (a name for nine counties—Novi, Ledenice, Bribir, Grižane, Drivenik, Hreljin, Bakar, Trsat, Grobnik—located on the North Adriatic coast in Croatia) and their new liege lords Frangipani (Frankapani), the counts of the island of Krk (today also in Croatia).

¹²⁷ Edited by Jagić, p. 72.

¹²⁸ Herzog (female Herzogin) is a German hereditary title held by one who rules a territorial duchy, exercises feudal authority over one estate called a duchy, or possesses a right by law or tradition to be referred to by a ducal title. The word is usually translated by the English Duke and Latin *Dux*. Herzog was borrowed into other European languages, such as Russian *Герцог* (*Герцог*), Belarus *Hertsag*, Serbian, Croatian and Bosnian *Herceg* (*Херцег*), Bulgarian *Hertsog* (*Херцог*), Latvian *Hercogas*, Estonian *Hertsog*, Finnish *Herttua*, Hungarian *Herzeg*, Georgian *Herts'ogi*, Danish *Hertug*, Dutch *Hertog*, Icelandic *Hertogi*, Luxemburgish *Herzog*, Norwegian *Hertog* and Swedish *Hertig*.

¹²⁹ Solovjev, *Odabrani spomenici*, p. 219.

¹³⁰ Black's Law Dictionary, pp. 1603–1604.

¹³¹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 398–399.

As with many other legal terms, *posluh* can have different meanings: 1) a witness himself; 2) a judicial hearing of a witness; and 3) a judicial tax for a witness hearing. The two last meanings are clear from a passage of King Dragutin's charter to Hilandar: "Hearings (*poslusi*) that are performed before the King or before King's officials, between villagers and Vlachs of this holy church for their lawsuits, either for enticing or for homicide, a tax (*posluh*) shall be two dinars" (послоуси кои се чине прѣд кралемъ или прѣд владаљици двора кралева мегоу людьми и Владхи сије светыи цркве что се прию съ земланни, или самы мегоу собомъ, ако боуде до провода или до вражде, послоихъ да јесть два динара).¹³² Other charters mention *posluh*, but only as a tax to be paid for a judicial hearing.

The *Syntagma* of Matheas Blastares in Chapter Δ (Д) - 10, entitled "On bishops and clerics, who are tried for their offences" (Περὶ τῶν δικαζομένων δι’ οἰκεῖα ἐγκλήματα ἐπισκόπων καὶ κληρικῶν, Ο πρεψιχъ се за своя съгрѣшенїа епископъ и пригътникъ),¹³³ has the subtitle "On judicial witnesses" (Περὶ τῶν ἐν τοῖς δικαστηρίοις μαρτύρων, Ο иже въ соудилищъ свѣдѣтеліехъ), in Serbian translation using the term *svedetelj*.¹³⁴ The laws were mostly taken from the *Basilika* and *Procheiron*:¹³⁵

- Rule 75 of Saint Apostles prohibits the testimony of a heretic and of only one believer (οὐδὲ εἰς μαρτυρίαν τὸν αἱρετικὸν προσίσθαι διορίζεται, δπου γε οὐδὲ πιστὸν ἔνα μόνον, ΝИ же въ свѣдѣтел’ство еретика приемати подобаєть повелѣваєть, идѣже ни же вѣр’на юдиного тьк’мо).
- In civil and criminal cases all persons are considered as trustworthy witnesses, except those to whom the law forbids or who are excused (Καὶ παράγονται καὶ ἐπὶ χρηματικῶν καὶ ἐγκληματικῶν ὑποθέσεων, εἰ μὴ κεκωλυμένοι ὑπὸ τοῦ νόμου, Υ ἐξουσατευόμενοι, Достовѣрнѣмы быти подобаєть свѣдѣтелю, и приводетъ се и о иманїи и грѣхов’ныхъ венцихъ иже не вѣрбран’ны соуть отъ Закона или освѣдаеми).¹³⁶
- "The one who was condemned for slander that provoked defamation does not have the right to testify" (Απόβλητος εἰς μαρτυρίαν γίνεται ὁ καταδικασθεῖς διὰ τὸ ποιῆσαι ταραχώδη φλυαρίαν, Отвръженъ въ свѣдѣтел’ство бываєть осужденъ быїи за иже сътворити смѹщен’ноу бледъ).¹³⁷

¹³² Ibid., p. 269.

¹³³ Ed. Ralles and Potles, p. 221; ed. Novaković, p. 232.

¹³⁴ Ed. Ralles and Potles, p. 227; ed. Novaković, p. 239.

¹³⁵ *Basilika* XXI, 1; *Procheiron* XXVII, Περὶ μαρτύρων.

¹³⁶ *Basilika* XXI, 1, 1.

¹³⁷ *Basilika* XXI, 1, 20.

- “No court shall accept testimony of only one person, even if he is a senator” (ἐνὸς δὲ μαρτυρίᾳ οὐκ ἔσι δεκτὴ ἐν οἰαδήποτε δίκῃ, καὶ συγχλητικὸς, ιεδινοῦ ότι σεβδέτελ’ στέο ήττο πριετνο ηι να κογοвомъ любо соудѣ, аште и сиг’клитикъ боудетъ).¹³⁸
- “In civil cases to the value of one *litre*, two faithful, honest, sworn witnesses testify; to [the value of] 50 *litres* three [witnesses]; if it is more, five [witnesses]. For charges in criminal cases shall be needed five faithful, trustworthy, sworn witnesses” (εἰ μὲν χρηματικὴ εἴη, μέχρι λίτρας μιᾶς, δύο πιστοὶ ἔντιμοι μάρτυρες ἐνομότως μαρτυρήσουσιν· εἰ δὲ ν' λιτρῶν, τρεῖς· εἰ δὲ ἐπέκεινα, ἔ. εἰ δὲ ἐγκληματικὸν εἴη τὸ αἰτίαμα, διὰ ἓ. μαρτύρων πιστῶν καὶ ἐντίμων ὀμνύντων, ἀποδείκνυται, αште оубо за имѣнїе боудетъ до литре иединое, два вѣрна ѡьстнаа свѣдѣтела съ заслугами свѣдѣтел’ ствоюютъ; аште ли же до .и. литръ—три; аште ли же выше того—пять; аште ли же о грѣхѣ боудетъ обвиновенїе, петими свѣдѣтели вѣр’ными и ѡьстными кльноуشتими се оуказоуетъ се).
- “A witness to whom I can tell how to testify is not considered as a reliable one” (Οὐκ ἔστιν ἀξιόπιστος μάρτυς ὁ κελεύεσθαι δυνάμενος παρ ἐμοῦ ἐπὶ τῷ μαρτυρῆσαι, Ήττο дистовѣр’ ны свѣдѣтель иже повелѣваемъ быти моги мню въ иеже свѣдѣтел’ ствовати).¹³⁹
- “A plaintiff may not bring household members as witnesses” (Ο κατήγορος οἰκειακοὺς μάρτυρας οὐ δύναται παράγειν, Οглаѓолъникъ домашнихъ свѣдѣтелей не можетъ приводити).¹⁴⁰
- “Woman should not ... testify upon making a will” (Η γυνὴ οὐ μετέρχεται ... οὐδὲ ἐν διαθήκῃ μαρτυρεῖ, Жени не проходитъ ... ни же въ завещаніи свѣдѣтелей ствоуетъ).
- “Emperor Leo’s Novel 48 prohibits women from testifying upon pacts and marriage agreements. It was ordered to them to testify on births and those things that were only allowed to be seen by women’s eyes” (Η δὲ μή. νεαρὰ τοῦ βασιλέως Λέοντος κωλύει τὰς γυναικάς ἐπὶ συμφωνοὶς μαρτυρεῖν καὶ συναλλάγμασιν ἐπὶ δὲ τοκετῶν, καὶ ἐφ’ ὅν μόνη θηλειῶν ὄψις ὄρδιν συγκεχώρηται, ἐπιτρέπονται μαρτυρεῖν, Четиридесетъ же и осма Новла цара Лава въз’браняуетъ женамъ о прикосифон’хъ свѣдѣтел’ ствовати и съ зем’шен’ныихъ браунїхъ. О рожденїахъ же и о ихъже иединѣ жен’сци оубо зреети проштен’нѣ соутъ, повелѣваемѣ соуть свѣдѣтел’ ствовати).
- “Five witnesses are sufficient for proving if there is no written document; if there is a writing, according to the law, three witnesses are enough” (Ἄρκονται

¹³⁸ *Basilika* XXI, 1, 23.

¹³⁹ *Basilika* XXI, 1, 6.

¹⁴⁰ *Basilika* XXI, 1, 23.

- “The poor do not testify, and a poor man is one whose property is valued at less than 50 golden coins” (Οἱ πένητες οὐ μαρτυροῦσι· πένης δέ ἐστιν ὁ μὴ ἔχων ν'. νομισμάτων περιουσίαν, Νιψτήν οὐ στέλνεται στεφανούσθεν; Νιψτήν οὐ στέλνεται στεφανούσθεν).¹⁴¹
 - “The freedman cannot testify against his ex-master or ex-master's son” (Οὐ μαρτυρεῖ ἀπελεύθερος κατὰ πάτρωνος, ἢ παιδὸς αὐτοῦ, Νε στέλνεται στεφανούσθεν).¹⁴²
 - “Those younger than 20 years may not testify,¹⁴³ nor can one who has been condemned by the Imperial Court and who did not have his rights restored, nor one who was imprisoned in a public dungeon or who was captured in taking money for the purpose of testifying or not testifying, or one who has been condemned for adultery” (Οὐ μαρτυρεῖ ὁ ἥττων κέ. ἐτῶν, οὗτε ὁ ἐν δῆμοσίᾳ δικαστηρίῳ καταδίκασθείς, καὶ μὴ ἀποκαταστάς, ἢ ἐν δεσμο-σίᾳ φρουρῷ βληθείς: οὗτε ὁ ἐλεγχθείς λαβεῖν χρήματα ἐπὶ τῷ μαρτυρῆσαι, ἢ μὴ μαρτυρῆσαι: οὗτε ὁ καταδίκασθείς ἐπὶ μοιχείᾳ, Νε στέλνεται στεφανούσθεν).¹⁴⁴
 - “A son may not testify for his father, nor father for his son. No one may testify in his case” (Υἱὸς πατρὶ, ἢ πατὴρ υἱῷ, οὐ μαρτυρεῖ. Οὗτε οἰοσδήποτε ἐν ἴδιῳ πράγματι, Σύνην οὐτοῦ ή οὐτοῦ σύνην οὐ στέλνεται στεφανούσθεν. Νιψτήν οὐ στέλνεται στεφανούσθεν).¹⁴⁵
 - “A slave does not testify; it is improper to give credence to slaves who accuse their masters, because a slave is by nature an enemy of his master” ('Ο δοῦλος οὐ μαρτυρεῖ· οὐ γάρ χρὴ πιστεύειν προπετῶς τοῖς οἰκέταις λέγουσι κατὰ δεσποτῶν· φύσει γάρ δοῦλος τῷ δεσπότῃ πολέμιος, Ράβη οὐ στέλνεται στεφανούσθεν; Νιψτήν οὐ στέλνεται στεφανούσθεν).¹⁴⁶

141 *Procheiron* XXVII, 22.

142 *Basilika LX*, 34, 36.

¹⁴³ In the original Greek text this limit is 25 years.

144 *Procheiron* xxvii, 24 and 26.

145 *Procheiron* XXVII, 27.

146 *Procheiron* XXVII, 28

- “A man shall not testify twice against the same person” (Ο κατὰ τίνος ἥδη μαρτυρήσας, οὐ πάλιν κατ’ αὐτοῦ, Ιήκε να нѣкіого оуже свѣдѣтельствовав, не свѣдѣтельствують пакы на нь).¹⁴⁷
- “The testimony of a minor, deaf, mute, furious, i.e. possessed, lascivious man, son in the power of his father … is prohibited” (Κωλύεται μαρτυρεῖν ἄνηβος, χωφὸς, ἄλαλος, μαινόμενος, ἀσωτος, υἱὸς ὑπεξούσιος, Βъз' браняють се свѣдѣтельствовати недорастъш, глouхъ, нѣмъ, неистовиі, реіш් џесоује се, блouднii, сын подвластны).¹⁴⁸

So-called “Justinian’s Law” has two provisions on witnesses. First, article 5 orders that five trustworthy witnesses may replace a lost written document (Λιψεις ктго проу имать съимъ въ нѣкоен вѣци, и речеть имал съимъ книгоу записноу, нь ю съимъ изгубиль, да дастъ .б. свѣдѣтель достовѣрных да га wпрадвѣ). Article 6 runs as follows: “If several witnesses testify in one case, and all of them do not testify identically, let them not be believed” (Лиψе свѣдѣтели мнози свѣдокоујутъ за єдинъ вѣци, и не свѣдокоујутъ вси єднако, да се не вѣрѹютъ).¹⁴⁹

Dušan’s Law Code does not mention witnesses as a type of evidence. However, article 80, “Of village boundaries” (Ω меги сел’скон), uses the term *svedoci*, but to mean conjurors rather than the more common witnesses: “Touching village boundaries, let both claimants bring witnesses, one a half and the other a half, according to the law. And whom the witnesses shall name, his shall it be” (За меги сел’ске, да дадъ ћвион кои ици свѣдоуе, онъ половина, а онъ половина по закону, да коудѣ рекъ свѣдоци, тоговази да есть).¹⁵⁰ Such an appeal to the knowledge of “good men of the vicinity” contains in itself the germs of the universal “jury” system. A juror is merely a compurgator.¹⁵¹

3.7 Document

A document is an instrument on which is recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which may be evidentially used. In this sense the term “document” applies to writings.¹⁵² Serbian mediaeval law marks a difference between public and private documents.

Public documents were State papers, or other instruments of public importance or interest, issued by the authority of the monarch. In mediaeval Ser-

¹⁴⁷ *Basilika* XXI, 1, 22.

¹⁴⁸ *Procheiron* XXVII, 33. *Syntagma*, ed. Ralles and Potles, pp. 227–231; ed. Novaković, pp. 239–243.

¹⁴⁹ Ed. Marković, p. 54.

¹⁵⁰ Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, p. 64; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

¹⁵¹ See the section 4.

¹⁵² *Black’s Law Dictionary*, p. 481.

bia, public documents were chrysobulls (χρυσόβουλλον), administrative orders called *prostagma* (πρόσταγμα), *horismos* (ὁρισμός) or *pittakion* (πιττάκιον), and other charters promulgated by the monarch. The most important were those with a general confirmation of the title of the nobility to their estates (articles 39 and 40 of the Code). For this type of charter, article 78 of the Code uses the phrase “a deed of grace”, i.e. gift (милостнъ книгоу) and article 79 “imperial grace”, i.e. deed (милость царевъ).¹⁵³ In disputes touching land, if anyone produce an imperial deed of gift and declared: “The Lord Tsar gave me this, as my equal held before me” (далъ ми юсть господинъ царь, како юсть дръжалъ мон дроугъ прѣгие мене),¹⁵⁴ it was sufficient as evidence. There is a similar formula in some charters contemporary to the Code.

A chrysobull, serving as a deed of gift, had to be authentic, i.e. competent, credible, and reliable as evidence. If the opposite party suspected that a chrysobull was an inauthentic act, it had to give evidence of forgery. However, to successfully disprove the authenticity of a signature and seal was very difficult, and legal sources do not describe any case of authentication. Chrysobulls had to be in accordance with the law; only in that case could they serve as evidence.

In a case when both litigants presented authentic chrysobulls (deeds of gift), as could have happened because of the negligence of royal (imperial) administration, article 83, entitled “Of disputes about land” (О потеси земли), orders: “Where in one dispute¹⁵⁵ about the land two imperial deeds of gift are produced, the property shall be his who holds the land now, up to the time of this council, and his deed shall be upheld” (Где се изнесета да ње книзъ царевъ за једној ипотеси за землю, кто съда дръжи до сегази добра събор'наго, тогова да юсть а милость да се не потвори).¹⁵⁶ The Serbian legal sources do not contain information on whether some other rule existed before or after promulgation of the Code.

Beside imperial deeds, Dušan's Law Code mentions judicial documents and proceedings relating to litigation, such as judgments, decrees, verdicts, writs, and warants.

On private documents in Serbian mediaeval law we have no data. Only article 4 of so-called “Justinian's Law” speaks on the importance of written docu-

¹⁵³ Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, pp. 62–63; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

¹⁵⁴ Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, p. 63; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

¹⁵⁵ The word is *ipotes*, from Greek ὑπόθεσις.

¹⁵⁶ Burr, “The Code of Stephan Dušan”, p. 214; Novaković, *Zakonik*, p. 66; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

ments: “If someone has litigation with anyone for any case, and he has a written document about that, but he hides it, and later [this document] helps him, and he shows it, this document shall not be recognized” (Аще јест ктo прити с кымъ за кого веци, а иматъ писаније в томъ тере га крије, а послѣ моу буџет на помоци тере га јавит, да мѹ се потомъ не примиет ни въ чо).¹⁵⁷ However, it is not a special provision on private documents as evidence.

3.8 Admissions

The Serbian legal sources, including Dušan's Law Code, do not contain information on admissions, confessions, concessions or voluntary acknowledgment made by a party of the existence of certain facts.

4 Jury (*porota*, порота)

The Serbian word *porota* (порота), usually translated as jury, was not a jury in the English sense of the word—a certain number of men and women selected according to law, and sworn (*iurati*) to inquire of certain matters or fact, and declare the truth upon evidence to be laid before them. In Serbian mediæval law, *porota* (jury) was a collective name for members of a jury (jurors, *porotnici*, поротници), who were conjurors or compurgators, not the jurors of English law. We have written on them above. However, four articles of Dušan's Law Code expounded a jury system, and they have provoked different opinions on the essence of the Serbian jury: was it a special type of court introduced by Dušan's judicial reform, or a kind of evidence? Regarding this we shall examine those articles.

Article 151, “Of juries” (О пороти), reads:

My Majesty commands. From now henceforward let there be a jury for great things and small. For a great matter, let there be 24 jurors, for a lesser matter 12, and for a small matter, six. And those jurors shall not make peace between the parties, but shall acquit or convict. And let every jury be in a church and the priest in robes shall swear them. And in the jury those are believed whom the majority acquit on oath.

Повелѣва царство ми; вт съда напрѣда да јесть порота, и за мншго и за мало; за велико дѣло да јесть кѣдѣ, поротници; а за помѣны дѣльгъ, вѣ, порот—

¹⁵⁷ Ed. Marković, p. 54.

НИСЬ; А ЗА МАЛО Д'БЛО, ~~Э~~, И ТЫЗИ ПОРОТНИЦИ ДА НЕС' ВОЛ'НЫ НИКОГА ОУМИРИТИ, РАЗВ'ШПРАВИТИ, ИЛИ ШКРИВИТИ; И ДА ЁСТЬ ВЪСАКА ПОРОГА ОУ ЦРКВЕ И ПОПЬ ОУ РИЗАХЪ ДА ИХ ЗАКЛЬНЕ; И ОУ ПОРОГ' КАМО СЕ ВЕКЫ КЛЬНОУ И КОГА ВЕКЫ ШПРАВЕ, ТЫЗИИ ДА С' В'БРОВАНІЙ.¹⁵⁸

The last sentence means that the jury (*porota*) decided by a majority vote.

Article 152, "Of the law" (О законѣ), reads:

As was the law under the Sainted King my grandfather,¹⁵⁹ let great lords be jurors for great lords, for middle persons their peers, and for commoners their peers. And on a jury there may be neither kinsman nor enemy.

Како јећть биљ законъ оу д'бда царства ми оу светаго кралја; да с' вељимъ власт'бломъ, вељи власт'бле, а среднимъ людемъ против' друежина ихъ; а севрд'амъ их друежина да с' поротници, и да н'ећть оу порот' родима, ни пизм'вника).¹⁶⁰

Here we have a Serbian custom, by no means the invention of Dušan, but an elaboration of the existing system already legalized by his grandfather King Milutin, who in his turn certainly only formalized an ancient national institution.¹⁶¹ None of the records of Milutin refer to juries, and the word *porota* does not occur, yet Dušan definitely attributes the institution to his grandfather, and in a charter of the same year as the Code (1349), granting certain privileges to the Ragusans, he provides for each side, in mixed disputes, to provide one half of the jury, one half Serbs and one half Latins, "according to the law as it was in the time of my father and my grandfather the Sainted King" (И къди прии латининъ Србинна, да да латининъ Србинъ половинъ латинъ а половинъ Срьблъ сведоке, такожде и Србинъ къди прии латинина, да м' даје сведоке половинъ Срьблъ, а половинъ латинъ, по законъ, како с' имали ё родитела и прародитела царства ми, светаго кралја).¹⁶²

¹⁵⁸ Burr, "The Code of Stephan Dušan", p. 527; Novaković, *Zakonik*, p. 118; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

¹⁵⁹ I.e. King Stefan Uroš II Milutin.

¹⁶⁰ Burr, "The Code of Stephan Dušan", p. 527; Novaković, *Zakonik*, p. 119; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

¹⁶¹ Đ. Đekić, *Zakonodavna delatnost kralja Milutina* [Legislative Activity of King Milutin] (Ruma 2001), pp. 61–95, considers that King Milutin promulgated a special law on juries. The author even tried to reconstruct this "Law" (p. 115). However, it seems that Đekić confused the mixed court with the mixed jury.

¹⁶² Edited by D. Jećmenica, *ssa* 11 (2012), p. 39.

Article 152 also formalizes the principle of trial by peers (*iudicium parium suorum, jugement par les pairs*), saying that it was promulgated by King Milutin.¹⁶³ However, trial by peers is also mentioned by article 106, without referring to the Sainted King. It must have been an ancient institution of the Serbian people.

Another interesting point is the expression “middle-people”, which seems to indicate the beginning of the breakdown of the strong distinction between the privileged and unprivileged classes: here we have the greater lords on the one hand and the commoners on the other sharply discriminated as usual, but for the first time we find a definite recognition of an intermediate class, which presumably included the lesser barons, the merchants, the townsfolk and tradesmen, and superior craftsmen, who were not of aristocratic rank, but were superior to the rank and file of the commoners and countryfolk in general. Perhaps the expression “good people” (добраље чловѣкъ) in article 97 refers to this early bourgeoisie, in which we must probably also include foreign residents, Saxons, Ragusans and Italians, who formed the chief element in the towns.¹⁶⁴

Article 152 gave the litigants the right of protest against the presence on the jury of a kinsman of the other party or of a definite enemy. This is a novelty, because formerly compurgators (jurors) were designated between relatives and brethren of the accused person.¹⁶⁵

¹⁶³ M. Polićević, “Ustrojstvo pravosuda u staroj Srpskoj Državi u XIII i XIV veku”, p. 344, thought that King Milutin used the book of judicial reform of French King Louis IX, commonly known as Saint Louis or Louis the Saint (1226–1270), under the title *Les Établissements*.

¹⁶⁴ Burr, “The Code of Stephan Dušan”, pp. 528–529; Novaković, *Zakonik*, p. 238.

¹⁶⁵ The Statute of Kotor, in Chapter cxxii, entitled “On the way of taking an oath referring to the estates inside the city and outside the city” (*De modo sacramentorum faciendorum super possessionibus in Civitate et extra*), orders: We want and we establish that oaths on estates inside the City should be taken by the 12 best and closest relatives of the party who owes an oath ... On estates that are outside the City, the oath shall be taken by six of the best and closest kinsmen of the same party (*Volumus et statuimus, quod sacramenta, quae occurserint facienda super aliquibus possessionibus, quae sunt intus Civitatem, fiant cum duodecim melioribus, et propinquioribus illius partis, cui dabitur sacramentum ... de possessionibus vero quae sunt extra Civitatem, fiat sacramentum cum sex melioribus, et propinquioribus suis ipsius partis*). The Statute of Vrbnik, a small town on the island of Krk (today in Croatia), written in the Glagolitic alphabet in 1388, prescribes that compurgators of both litigants (*porotnici*) could only be relatives (*bliziki, bližičstvo*, from *blizak* = close). Edited by L. Margetić and P. Strčić, *Krčki (Vrbanski) statut iz 1388* (Krk 1988), pp. 84, 96–98. However, the Statute of Budva, in Chapter cxiii, entitled “On witnesses” (*De Guarenti*), contains a provision which is close to article 152: “We order that before a court a defendant can contest a declaration of witness, if a witness is under the age of 14, if he is the

Article 153, “Of merchants” (Ω τρ̄γοβ’цехъ), reads

Juries for foreigners and merchants shall be made half of Serbs and half of their fellow-countrymen, according to the law of the Sainted King.

Иновѣр’цемъ и трыгов’цемъ порот’ци половина Срѣбль, а половина ных дро-
ужинъ, по закону светаго краля).¹⁶⁶ Although article 153 refers to the “Law
of the Sainted King”, King Milutin’s treaties with Dubrovnik do not men-
tion a mixed jury, but rather a mixed court.¹⁶⁷

Article 154, “Of jurymen” (Ω поротници), reads

When jurors acquit on oath according to the law, and after acquittal guilt
be proved against him whom they have acquitted, I shall fine those jurors
1000 perpers each, and in future those jurors shall not be believed and
they may not take either husband or wife.

Кон се поротници кљнъ и шпрадвъ, юногази по закону и ако се по тојзи
шпрадвъ поличије јубрѣте истину оу юногази шпрадв’чије когано је шпрадвила
порота; да оузе ми на теж’зији поротницих по тысјци перьперь; а
векије потомъ да неесъ тызји поротници вѣрованиј; ни да се кто ѡт них ни
моужи ни женїи).¹⁶⁸

It is clear that the task of jurors (*porotnici*, i.e. compurgators) was to acquit
on oath and release somebody from accusation. But if jurors made a mistake,
and guilt was proved, they would have to pay a fine and their rights and repu-
tation would be diminished. This kind of infamy is formulated in article 154
with a peculiar sentence: *ni da se kto ot nih ni muži ni ženi* (“and let none of

plaintiff’s father, brother, brother’s son, nephew, uncle, grandfather, bridesman, son-in-law, father-in-law (of husband) or any other kinsman by paternal or maternal line. Neither blood enemy, nor godfather may testify” (*Ordinemo, che a guaranti possa opponer la parte contraria in giudicio se il guarante fosse de manco de anni 14, o se li fosse padre o fratello o cugino carnale o nievo o barba o avo o cugnado o genero o socero o consegro, e quello se intenda tanto del padron quanto della moglie li sopradetti. Ancora non può esser ... inimico del sangue, compare*).

¹⁶⁶ Burr, “The Code of Stephan Dušan”, p. 527; Novaković, *Zakonik*, p. 120; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

¹⁶⁷ See Chapter 26, section 4.

¹⁶⁸ Burr, “The Code of Stephan Dušan”, p. 528; Novaković, *Zakonik*, pp. 120–121; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

them take husband or wife"). We already wrote that in Serbian different words are used for marrying according to the sex of the person: the verb for a man to marry is *oženiti se*, while for a woman, in the modern language, it is *udati se*, literally, to give oneself up. However, the Code uses the old verb *mužiti se*, from the word *muž*, a husband.¹⁶⁹ The words *ni muži* in the text cannot possibly be applied to a man. It must mean that in Dušan's time, women sat in juries.¹⁷⁰

The later Athos and Bistrtsa texts have a different version: "And if they be found to have knowingly wrongfully acquitted or given up, or taken any bribe, having paid as aforesaid, they shall also be banished to another unknown land" (Athos text: и ако се изнагије ер соу знајоције криво упрадили или штдали, или нећика мита њзимали, платив'ше више реченое, и да се заточе оу ин' земљу не знајемоу; Bistrtsa text: и ако се изнагије ере соу знајоци криво упрадили или штдали, или некаја мита љузимали, плативше више реченое, и да се заточе оу иноу земљу, неизнагијем).¹⁷¹ It seems that the Athos and Bistrtsa version became a kind of correction of a previous provision, because the majority of compurgators (*porotnici*) could already be married.

Under the influence of Waclaw Alexander Maciejowski and Hermenegild Jireček, some Serbian legal historians, in a spirit of Slavic Romanticism, considered that the jury was not only an English institution, but a Slavonic (and

¹⁶⁹ See Chapter 15, section 1.2.

¹⁷⁰ That was the opinion of Taranovski, *Istorija*, vol. II, p. 67, and Dolenc, *Dušanov zakonik*, p. 88. In the comment on article 154, Novaković (*Zakonik*, p. 239) wrote that the wording *da se kto od njih ni muži ni ženi* is not clear. Of course he understood the meaning of the verb *mužiti se*, but he did not believe that women could be jurors, because he considered that the Serbian jury was a type of court. Radovanović, *Dve omaške*, pp. 158–164, thought that prohibition of entering into a marriage for unconscientious jurors, male and female, was a permanent provision meaning extinction of their parentage and descendants. However, as Solovjev, *Zakonik cara Stefana Dušana*, pp. 299–301, pointed out, some other Slavonic legal sources mention women as jurors (*porotnici*). The Vinodol Statute in article 56 (ed. Margetić, p. 138), speaking on rape, orders that a raped woman who has no witnesses has to take an oath with 24 compurgators (jurors, *porotnici*) and "all her conjurors must be women" (*I vvi ne porotnici imaju biti žene*). The Statute of Vrbnik, in article 1 (ed. Margetić and Strčić, pp. 97–98), speaking on rape as well, says that a raped woman must have 12 compurgators. The first half of jurors (*porotnici*) were appointed by the court and the other half had to be found "among women of good reputation" (*tude žene dobra glasa*). Article 113 of the Budva Statute orders: "We also wish that a woman could be believed in cases referring to the order in a mill, on full age, on children and on maidenhead" (*Ancora volemo, che la moglie sia creduta, se fosse questione di giorno de molino, di età danni, de fanti, de virginità de punzella*).

¹⁷¹ Burr, "The Code of Stephan Dušan", p. 529; Novaković, *Zakonik*, p. 121; *Zakonik cara Stefana Dušana*, vol. I, p. 198; vol. II, p. 210.

Serbian) one as well.¹⁷² According to that opinion, the jury was a kind of State court.¹⁷³ However, Božidar Marković, in his study on evidence in criminal trial procedures,¹⁷⁴ proved that the jury and jurors (*porota, porotnici*) mentioned in Dušan's Law Code were conjurors or compurgators, persons who appeared before a court and swore that they believed in the oath of the accused person.¹⁷⁵ *Porotnici* were not part of any court, because they were not appointed by a court, but by litigants themselves. This is clear from Tsar Dušan's treaty with Dubrovnik (20 September 1349), where we read: "And when a Latin [Ragusan] sues a Serb, a Latin has to give a half of the witnesses [conjurors] of Latins, and a half of Serbs; also when a Serb sues a Latin, he has to give half of the witnesses of Serbs, and the other half of Latins, according to the law of my Imperial father and grandfather, the Sainted King" (И къди прии Латининъ Сръбина, да да латининъ Сръбина половинъ Латинъ а половинъ Сръбъ свѣдоке, такожде и Сръбина къди прии латинина, да мъ даје свѣдоке половинъ Сръбъ, а половинъ Латинъ, по законъ, како съ имали Ѹ родитела и прародитела царствъ ми, светаго краља).¹⁷⁶ According to this text, during the reign of Kings Stefan Dečanski and Milutin there existed a "law" (custom) which prescribed that a plaintiff must appoint the "witnesses" (jurors, i.e. conjurors), half Serbs and half Ragusans, who would swear for the accused person.

5 The Judgment Pronounced by the Court or Judge and Its Execution

Dušan's Law Code contains two provisions concerning the judgment of the court (sentence, verdict, decision).¹⁷⁷ The first refers to the material aspect of a decision, and the second one to the formal aspect.

¹⁷² Such an opinion was given by J. Avakumović, "Stara srpska porota poređena sa engleskom porotom" ["Old Serbian Jury Compared with English Jury"], *Glas SKA* 44 (1894), pp. 13, 26, who thought that the cradle of the jury was in Old Serbia, as well as England, and even that the Serbian mixed jury was more perfect than the English one.

¹⁷³ Novaković, *Zakonik*, p. 258, who wrote that in mediaeval Serbia different types of courts administered justice, such as ecclesiastical courts, juries, city courts, "courts-baron" and mixed courts.

¹⁷⁴ B. Marković, *O dokazima u krivičnom postupku* [On Evidences in Criminal Trial Procedure] (Belgrade 1921), pp. 53–56.

¹⁷⁵ B. Marković's opinion was accepted by Taranovski, *Istorija*, vol. iv, pp. 215–218, and the majority of modern legal historians, including the author of this text (*Srednjovekovno srpsko pravo*, p. 120).

¹⁷⁶ *ssa* 11 (2012), p. 39. The same words were repeated in Tsar Uroš's treaty with Dubrovnik from 25 April 1357, *ssa* 12 (2013), p. 82.

¹⁷⁷ In Anglo-Saxon law there are several terms to denote the judgment formally pronounced

Article 172 (already quoted)¹⁷⁸ orders that court decisions must be righteous and according to the law: “Every judge shall judge according to the Code, justly, as written in the Code, and shall not judge by fear of me, the Tsar.”¹⁷⁹ This guarantee of judiciary independence is based on the Byzantine tradition *princeps legibus alligatus*.¹⁸⁰

Article 163 (also already quoted) orders that “every judge shall write his judgments ... and shall write a copy ...”¹⁸¹

In primitive law systems the execution of the judgments pronounced by the court was a task of the party who won a lawsuit.¹⁸² The main outlines of the earliest situation in the realms of the Serbian Župans and later Kings are mostly inferred from historical interpretations of the clauses contained in Dušan's Law Code, which mentions crimes called *samosud* and *odboj*.¹⁸³ The practice of powerful armed lords dispensing justice on their own accord was

by the court. The word “sentence” is properly confined to criminal proceedings. In civil cases, the terms “judgment”, “decision”, “award”, “finding”, etc. are used. The formal decision made by a jury is called a “verdict”, while a “ruling” is a judicial or administrative interpretation of a provision of a statute, order, regulation, or ordinance. In Serbian there is only one word to denote the judgment pronounced by the court—*presuda* (*npecyda*).

¹⁷⁸ See Chapter 8, section 1.

¹⁷⁹ Burr, “The Code of Stephan Dušan”, p. 533.

¹⁸⁰ Cf. J.B. Bury, *The Constitution of the Later Roman Empire* (Cambridge 1910), p. 29.

¹⁸¹ Burr, “The Code of Stephan Dušan”, pp. 531–532.

¹⁸² Among numerous historical examples I shall quote Table III from the famous Roman Law of Twelve Tables (*Lex Duodecim Tabularum*):

One who has confessed a debt, or against whom judgment has been pronounced, shall have thirty days to pay it in. After that a forcible seizure of his person is allowed. The creditor shall bring him before the magistrate. Unless he pays the amount of the judgment or some one in the presence of the magistrate interferes in his behalf as protector the creditor so shall take him home and fasten him in stocks or fetters. He shall fasten him with not less than fifteen pounds of weight or, if he choose, with more. If the prisoner choose, he may furnish his own food. If he does not, the creditor must give him a pound of meal daily; if he choose he may give him more.

Aeris confessi rebusque iure iudicatis xxx dies iusti sunt. Post deinde manus inieicto esto. In ius ducito. Ni iudicatum facit aut quis endo eo in iure vindicit, secum dicit, vincito aut nervo aut compendibus xv pondo, ne minore, aut si volet maiore vincito. Si volet suo vivito. Ni suo vivit, qui eum vinctum habebit, libras farris endo dies dato. Si volet, plus dato.

English text according to the edition of O.J. Thatcher, *The Library of Original Sources, Vol. III, The Roman World* (Milwaukee WI 1901), pp. 9–11. Latin text according to the edition of A. Malenica, *Praktikum iz rimskog prava* (Novi Sad 1997), p. 66. The author used the critical edition by S. Riccobono, G. Baviera, A.C. Ferrini, G. Furlani and V. Arangio-Ruiz, *Fontes iuris romani anteiustiniani*, vol. I–III (Florence 1941, reprint 2007).

¹⁸³ See Chapter 20, sections 1 and 3.

already strictly forbidden at the time that the Serbian legal sources were written. Following the model of their more developed neighbour—the Byzantine Empire—the State began to interfere in the payment of sanctions shaped in customary law. The charters of the Serbian Kings presented to the citizens of Dubrovnik (Ragusa) show that already in 13th century, execution of judgments pronounced by the court lay firmly in the hands of the public authorities. It is clear from King Stefan Uroš's oath to the Ragusans (23 August 1254), where we read:

If any meet a man from my Kingdom who was condemned for a debt to your man [to Ragusan], my judges shall deliver him his asset; if they do not deliver him what he is owed, they have to deliver the culprit, until the term they have indicated. If the judges do not deliver a condemnee, my Royal Majesty shall seize him and force him to pay his debt.

И ако се ѡбреће чловекъ земље кралевства ми ѿдгень вашемѹ чловекѹ, да мѹ мој съдьце издајо добытъкъ. Ако ли мѹ добытка не стече, а ћни да подајо кривца самога до Ѹрока, а доколѣ съдьце Ѹреје. Ако ли га съдьце не издаје да гдѣ ми правъда Ѹкаже Ѹзети тъ дальъ, да га Ѹзме кралевство ми и да га постави гдѣ га биде право поставити.¹⁸⁴

The Ragusan answer to the King's oath (August 1254) uses more precise terminology:

If any [Ragusan] citizen was condemned [for debt] by a common court [i.e. *stanak*] we shall deliver his property. But if his property is not sufficient, we shall deliver the culprit personally, to pay until the term appointed by the judges. If he does not pay till this term, your Royal Majesty shall do what is necessary.

И ако кога граганна ѿдди ѡвькы съдъ да подајемо ёговъ добытъкъ. Ако ли мѹ добытка не стече, а мы самога кривца да даемо свошвь гравовъ, доколѣ съдьце Ѹговоре да се плати. Не плати ли се до Ѹрока, да потола да є шталао на волы кралевства ти.¹⁸⁵

In King Milutin's time the fine of *vražda* for the crime of homicide was already paid to the State.

¹⁸⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 213.

¹⁸⁵ Ibid., p. 216.

At the time of the promulgation of Dušan's Law Code, legal actions had already acquired the features of public law, with some remnants of old customary procedures. The execution of judgment pronounced by the court is directly evidenced in procedural institutes stipulated in Dušan's Code. An official called a *priстав* had multiple procedural roles, including his prominent involvement in the action of *izdava* or, in modern terms, the form of execution.¹⁸⁶ The private aspect of justice and the court procedure in general is also apparent in the engagement of social classes called *otroci* and *sokalnici* in the execution of judgments.¹⁸⁷

Article 188 contains the first reference to a special official of the court called *globar* or fines-master, whose duty was to collect the fines imposed, but only upon the written certificate of the judges. It is entitled "Of treasures" (О гло-
барехъ законъ) and reads: "The treasurers who are with the judges, whatsoever fines the judges shall impose and deliver in writing to the treasurer, such a fine shall the treasurer take. And save what the judge impose and certify in writing to the treasurer, the treasurer may not take from any man" (Глобари кои стое при съдїахъ, что искде съдїе и оуписав'ше даде глобаремъ, ты глобѣ да оузымаютъ глобаріе, аще не искде съдїе, и не даде оуписав'ше глобаремъ, да писъ вольни глобари, ни за цо забавити комъ).¹⁸⁸ According to article 194 (already quoted) it seems that in mediaeval Serbia there existed Church fine-masters (*crkveni globari*), who collected fines for the Church. However, articles 188 and 194 occur only in the late Rakovac text, and we cannot be sure of their authenticity.¹⁸⁹

6 Trial Procedure in Semiautonomous Towns

6.1 Kotor

The Statute of Kotor contains numerous provisions on trial procedure, but they were not placed in a separate part of the text, but rather scattered through several chapters.

For summons the Statute uses the following terms: *vocare ad Curiam*, *citare ad Curiam*, and *vocare ad placitum*. The person who summoned litigants and

¹⁸⁶ See Chapter 26, section 6.2. Cf. A. Solovjev, "Izdava po srednjivekovnom srpskom pravu" ["Izdava According to Serbian Mediaeval Law"], *APDN* 36.1–2 (1938), pp. 133–138.

¹⁸⁷ See Chapter 5.4 and 5.5.

¹⁸⁸ Burr, "The Code of Stephan Dušan", p. 530; Novaković, *Zakonik*, p. 143; *Zakonik cara Stefana Dušana*, vol. III, p. 274.

¹⁸⁹ See S. Šarkić and T. Matović, "O izvršenju presuda u srednjovekovnom srpskom pravu" ["On the Execution of Rulings in Serbian Mediaeval Law"], in *Četrdeset godina izvršnog zakonodavstva u građanskim postupcima, Zbornik radova* (Belgrade 2018), pp. 7–18.

witnesses was a civil servant, called *vicarius*, appointed by judges, according to old customs.¹⁹⁰ The vicar sent a summons orally, as was described in chapter 388, speaking on the summons of a woman: if the vicar could not find a woman, he had to call her thunderously in the house where she lives, three times on different weekdays. If she did not appear before the court, she would be guilty of contumacy (*ordinamus, quod quotiescumque citari debuerit ad Curiam aliqua mulier in civitate, quae se a Vicario Communis no permiserit invenire, citetur ad domum suae habitationis alta voce, quatenus comparere debeat ad Curiam in termino sibi per Vicarium de mandato Iudicium assignato, tali personae, de iustitia responsura; qui terminus, sive termini in Iudicum discretione existant, personarum et negotiorum qualitatibus perpensis, et si dicta mulier tribus vicibus diversis diebus, ut praemittitur citata non comparuerit, procedatur contra ipsam, tamquam contumacem, secundum formam Statuti*). It seems that such a procedure was used for other litigants as well, not only for women.

A defendant was called in Kotor *obliquus*, while for a plaintiff there is no special term. The duty of a plaintiff was to appoint witnesses. Some persons could not appear before the court. For example, a son who was a minor, i.e. under paternal power.¹⁹¹ If a widow was summoned she could designate a representative to litigate for her. Married women could appear before a court in only two cases: if she was violently attacked or if someone took by force something of her movable property (*de verberatione et de violentia alicuius rei mobiles*).

The second stage of the trial was the examination of witnesses. The rule of Roman law *testis unus, testis nullus*,¹⁹² “one witness, no witness”, i.e. that a single witness or other evidence to an event is insufficient to establish that the event truly happened, was accepted in the Statute of Kotor, but only for cases inside the city; for lawsuits outside the city, one witness could be sufficient (Cap. 131: *Ordinamus, quod testimonium unius testis de cetero non valeat: quia vox unius, vox nullius, nisi esset extra Civitatem, tunc unus possit esse testis*).

The persons who could not testify were relatives, women, a cleric for a layman, and a mother for her sons and daughters (but a father could).¹⁹³ In cases of debts and other obligations, two witnesses were needed inside the city, and

¹⁹⁰ Cap. 20: *Potestatem habeant soli iudices ad eorum voluntatem, secundum antiquam consuetudinem eligere, et ponere vicarium.*

¹⁹¹ Cap. 73: *Filius existens in potestate patris vocatus ad placitum nullo modo respondere teneatur.*

¹⁹² Sec. *Cod. Iust.* iv, 20, 9, the law promulgated in 334 AD by Emperor Constantine the Great.

¹⁹³ See Cap. 127, *De iis qui repelluntur a testimonio*; Cap. 128, *De testimonio Clericorum non acceptando*; Cap. 129, *De testimonio patris, vel matris inter filios*; Cap. 130, *Quod mulier non possit esse testis.*

only one outside the city, but only for lawsuits to the value of 10 perpers.¹⁹⁴ A witness had to take an oath *ad sancta Dei Evangelia*. The examination of a witness consisted of a series of questions put to him by the judges for the purpose of bringing before the court the knowledge that the witness had. The witnesses would be examined on the place and time of the event, one by one and without contact (*postea eos divisim, unum post alterum interrogent, et etiam eos interrogent de loco et tempore*). If the statements of witnesses were discordant the testimony would be worthless (*si discordes eos invenerint, testimonium ipsorum pro nihilo habeatur*). If the witnesses declared that they did not remember the place and time, their testimony would still be worthy (*si autem ipsi testes, vel aliqui ex eis dicant se non recordari de loco, vel de tempore, testimonium ipsum valeant*).¹⁹⁵

Documents or written evidence was as worthy as much as witnesses. In commercial relationships the principle *prior tempore potior iure* (“he who is first in time is preferred in right”) was applied.¹⁹⁶

The Statute of Kotor provides for torture—to inflict intense pain to body or mind for the purposes of extracting a confession or information—in two cases: 1) if any Albanian, Slav or Vlach kills any citizen of Kotor, and there were no witnesses to prove the homicide;¹⁹⁷ and 2) if there is a presumption, but not evidence, that some person of bad manners has committed a larceny.¹⁹⁸

The Statute of Kotor mentions conjurators (*iuratores*) and jury (*porota*).¹⁹⁹ Conjurators had to be persons related by blood (*consanguineus*), but in the cases of property a son could not testify for his father, nor brother for brother.

Advocates—persons who assist, defend, or plead for another—had an important role in lawsuits.²⁰⁰ Kotor’s advocates were not persons learned in the law. It was sufficient that they had knowledge of statutory provisions. The Stat-

¹⁹⁴ Cap. 133, *De testibus inquantum sunt recipiendi*.

¹⁹⁵ Cap. 132, *Qualiter testes recipi debeant*.

¹⁹⁶ Cap. 292 (promulgated 1322), *De cartis Notariorum factis pro habenda iustitia ad aliam Curiam*.

¹⁹⁷ Cap. 92, *De homicidiis: et si aliquis Albanensis, Sclavus, vel Vualachus interficerit aliquem civem Catharensem, et testibus non potuerit probari, et aliqua fama, vel praesumptio de ipso esset, quod Comes, et Iudices habentes Deum praeoculis, possint ipsum Albanensem, Sclavum, vel Vualachum ponit facere ad tormentum, prout eis visum fuerit, ut veritas cognoscatur, et Iustitia finiatur*.

¹⁹⁸ Cap. 107, *De furtis factis in Civitate et districtu Cathari: si esset aliqua evidens presumpcio contra aliquam personam malae conditionis, et famae, si ipsum diffamatum Curia talis conditionis, et famae repererit, ponit debeat ad tormentum, et torqueri prout Curiae videtur convenire, ut veritas cognoscatur*.

¹⁹⁹ Cap. 351, *De Porrotis faciendis*, and Cap. 424, *De Consuetudinibus hominum de Gherbi*.

²⁰⁰ Cap. 6, *De electione Advocatorum Curiae*, and Cap. 29, *De sacramento Advocatorum*.

ute provides for four advocates elected by the citizens of Kotor. Any litigant could choose his advocate freely. It was prohibited to an advocate to refuse the defence of the party in a lawsuit, except if he was related with the litigant by blood. The advocate had to take an oath that he would be objective and that he would not abandon his client while the procedure was in progress. He would not demand higher reward than prescribed by law, and he would not instigate a litigant to commit perjury.

Judges had to first write a sentence and then to pronounce it. If a litigant, after three summons, refused to appear before a court, the judgment could be pronounced in contumacy (*in contumaciam*).

The right of appeal was introduced in Kotor in 1367, but only for cases to the value of more than 50 perpers. However, an appellate court did not exist in Kotor. The superior court to review the decisions of the city courts was the Papal Court in Rome or Board of Educated Lawyers in the Italian towns of Perugia, Padua and Bologna.

Chapter 65 of the Statute provides for judge-arbiters (*De Iudicibus Arbitris*), persons bound to decide according to the rules of law and equity. Arbiters were allowed only in lawsuits referring to immovable things (*super re stabili*). The plaintiff and defendant would choose two neutral persons, and a court would appoint the third. Arbiters rendered a desicion after a hearing at which both parties had an opportunity to be heard. If the arbiters, summoned two or three times, did not accept their duty, other persons would be chosen. If the new arbiters refused to administer justice as well, the case would be presented before one of the existing courts. If the judge-arbiters rejected pronouncing a judgment, they had to pay six perpers to the Community of Kotor.²⁰¹

6.2 Budva

According to the Statute of Budva justice was administered by judges (*giudici*), arbiters and so-called *gastaldi*²⁰²—probably persons who tried lawsuits in guilds or fraternities.²⁰³ Beside litigants, or instead of them in trial procedure,

²⁰¹ Cap. 65: *et tam postulator, quam postulatus duas idoneas personas, quas sine odio esse cognoverint, communiter eligere teneantur, et tertium Curia dare teneatur, et coram illis electis Iudicibus lex definiatur, et si illi electi Iudices intrare noluerint, bis, et ter requisiti, eligantur alij Iudices. Quod si et illi alij electi intrare noluerint, tunc ad Curiam Iuratorum Iudicum revertere teneantur ... si inter eos iudicare noluerint, quilibet eorum Iudicum arbitrorum sex yperperor Communitati solvere teneatur.*

²⁰² Cap. 109.

²⁰³ A guild was a voluntary association of persons pursuing the same trade, art, profession or business, such as printers, goldsmiths, artists, wool merchants, etc., united under a distinct organization of their own, analogous to that of a corporation, regulating the affairs of their

advocates were present.²⁰⁴ The Chancellor of the Commune, who took notes of proceedings, assisted the trial as well.

A person who brought a legal action against another was called in the Statute *quello che domanda*, *quello che si lamenta*, and *chi li lamentasse*;²⁰⁵ only Chapter 58 uses the term *acusador* for the plaintiff. A person against whom a legal action was brought was designated as *quello che vien domandado*, *persona che fosse dimandata*, *nostro citadino che fosse dimandato*,²⁰⁶ and only in one case the defendant was named *accasonato*, i.e. accused (Cap. 110).

To appear before court it was necessary that a party posses mental capacity. Minor persons, the weak-minded, the deaf and similar had to be represented at court by their guardians. Chapter 205 explicitly orders that in case of children under age and without parents, judges must appoint one of their relatives as a tutor or representative, who could sue and reply in the court instead of them (*De tutor de fanti senza età: Ordinemo, che se fossero orfani de padre et madre senza età, li giudici siano trenuti a far un loro proninquo tutor o procurator, che possa per loro domander et responder alla corte*).

Parties to a lawsuit and witnesses were summoned by special Community officials called *senico* and *vataco*. Summons had to be sent to the litigants themselves, not to any member of their family. However, when any citizen of Budva was summoned before the Serbian Imperial Court, the summons was sent either with a seal (verbal summons) or with a writ of the court (*con lettera o con bola*).²⁰⁷ If a litigant did not appear before the court after the first summons, he had to pay 2 dinars to the court; if he did not appear after the second summons, the fine would be 4 dinars, and if he did not appear after the third summons, the sentence would be pronounced in contumacy.²⁰⁸

trade or buisness by their own laws and rules, and aiming by cooperation and organization, to protect and promote the interests of their common vocation. In mediaeval history these fraternities or guilds played an important part in the government of some states, such as in Florence, in the thirteenth and following centuries, where they chose the council of government in the city. The word is said to be derived from the Anglo-Saxon *gild* or *geld*, a tax or tribute, because each member of the society was required to pay a tax towards its support. *Black's Law Dictionary*, p. 708.

²⁰⁴ Cap. 76, 84, 90, 108, 131, 233.

²⁰⁵ Cap. 30, 30, 39, 90.

²⁰⁶ Cap. 90, 92, 100, 101.

²⁰⁷ Cap. 3. Cf. article 62 of Dušan's Law Code.

²⁰⁸ Cap. 89, *De citar homo alla ragione: Ordinemo, che ciascuna persona si deve citar alla corte per il senico o per il vataco, et citar personalmente, et non dir in casa alla fameglia, et essendo così citado, non comparendo la prima volta, paghi danari 2 alla corte; et la seconda se non comparisse, paghi danari 4 alla corte; et se non venisse la terza, sia contumace di cosa, che può esser contumace.*

If a married woman whose husband was absent from the town was summoned, she had to appear before court personally, or to appoint any person (*responso legitimo*) who could make statements on a disputable case.²⁰⁹

The trial procedure started by the bringing of legal action and examination of litigants and witnesses. At court, nobody could make statements in the name of another; parties in a lawsuit or their advocates had to make statements on their own. Judges had to be objective and hear both sides, according to the rule *audiatur et altera pars*.²¹⁰ If it was proved that any judge or other official took bribes (*simonia*), they would be punished with a fine of 50 perpers (half of the fine went to the *Conte*, the other half to the Commune) and disqualification from holding offices. They also had to pay indemnity to the party in a lawsuit who lost the case because of their corruption.²¹¹

The burden of proof rested on both parties. As evidence, the Statute mentions confession of the opposite party, the statement of so-called legal witnesses (*testimoni legitti*), notary deposition and documents with a seal.²¹² According to the statutory provisions, witnesses could not be persons under 14 years of age, close relatives of the defendant, servants, paupers whose property was valued at less than 10 perpers, blood enemies, godfathers, Serbs or Albanians, women, perjurors, traitors, or persons who had common property with the accused.²¹³ Witnesses had to take an oath before judges and litigants that they would speak the truth.

Judges were obliged to pronounce a sentence (*sententia, sentenzia*) within 20 days after the end of the trial procedure.²¹⁴ The Chancellor was in charge to read a sentence to the present litigants, then to copy it on a separate sheet of paper (*in cedula*), and to deliver it to the notary.²¹⁵ The notary composed, within eight days, a special document called *carta di sententia*. This way the document became “perpetually firm and lawful” (*et sia perpetuamente ferma et credita*).²¹⁶

²⁰⁹ Cap. 99.

²¹⁰ Cap. 87.

²¹¹ Cap. 93, *De simonia: Ordinemodo, che se alcun giudice ricevesse simonia per alcuna questione, et li fosse provato, paghi per pena perperi 50, la mità al conte et la mità al commun, et mai più possa haver officio del commun; et il danno, che havesse la parte, che perdesse la questione; e tanto dicemo del notaro e deglie altri officiali.*

²¹² Cap. 106.

²¹³ Cap. 113.

²¹⁴ Cap. 104, 121.

²¹⁵ Cap. 80.

²¹⁶ Cap. 74.

Chapter 109 confirms that the Statute of Budva accepted the principle of *non ultra petita* (“not beyond the request”), meaning that a court could not decide more than it had been asked to. In particular, the court could not award more to the winning party than it was requesting.²¹⁷

According to Chapter 243 of the Statute, an appeal could be taken only for lawsuits to the value of more than 30 perpers. Every citizen of Budva could complain of an error or injustice committed by a local tribunal and request a new judgment in Kotor, over a period of one year. If a sentence was reversed by an appellate court in Kotor, the other party had a right for reimbursement, and the appellant had a right for indemnity of all expenses that he had. The judges who had pronounced the sentence in that case had to pay a fine of 25 perpers.²¹⁸

Litigants could choose judge-arbiters, and they had to take an oath before the city judges and Chancellor. All decisions, sentences or settlements of dispute that they pronounced in accordance with the Statute were “perpetually firm and valid”.²¹⁹

The Statute of Budva provides for compulsory payment of debt as the enforcement of legal process and creditor’s remedie. To begin the process of compulsory payment it was necessary that judges pronounce a special decision, on the basis of a sentence that became definitive (*sentenzia definitiva*).²²⁰ After the acknowledgment of his debt, and after judgment was given against him, the debtor had eight days in which to pay. A debtor who could not pay had to contact official sellers and assessors who would, according to the Statute, appraise and sell as much of his property as was necessary to settle the debt. If he refused to do that, the judges were authorised to perform compulsory payment.²²¹

In connection with compulsory payment was another institution of trial procedure, called *attazzi*. Besides in the Statute of Budva, *attazzi* were men-

²¹⁷ Cap. 109, *De sententia data per giudici, arbitri et gastaldi: Ordinemo, che se alcun homo havesse questione con altri avanti li giudici, gastaldi o arbitri di una cosa, et quelli dessero sententia di più d’una cosa, quella sententia non tenga ne vaglia.*

²¹⁸ Cap. 243, *De appellacion de sentenzia: Ordinemo, che ogni nostro cittadino, al quale fosse data la sentenzia sopra esso de perperi 30 in suso, et lui si sentisse aggravato, che possi appellarsi a Cattaro per termine d’unanno; et si la sentenza venisse revocata, che all’altra parte fosse satisfatto il danno, et la spesa a colui, che si adimanda; et le giudici, che furono in quel tempo, paghino de pena perperi 25.*

²¹⁹ Cap. 74, *De arbitri: Ordinemo, che li arbitri se debbino trovar de volontà delle parti per sacramento de fede in presentia dellli giudici et del cancelliero; et cosi fatti, ciò che fosse per il detti arbitri fatto, giudicato, o concordemente fatto secondo il Statuto, sia perpetuamente fermo et rato.*

²²⁰ Cap. 267, *Di non metter debtor in cosa mobile.*

²²¹ Cap. 268, *Se alcuno fosse sentenziato di alcun debito.*

tioned in the laws of Dubrovnik²²² and Kotor,²²³ but under different names—*aptagi, aptigi, aptagus, attaghi* or *attagi*.²²⁴

Chapter 97 of the Statute of Budva prescribes that in the case of a defendant's absence, a court would charge the plaintiff with a special tax called *attazzi* and give him possession of the required thing (*meter l'altra parte nella possessione che cerca, levando li attazzi la corte*), if a dispute concerns any law of things; on the issue of obligations the plaintiff would enter into possession of the property of the defendant.²²⁵

The Statute of Budva mentions the institution of the jury (*porotta*), but only in cases when a foreigner sued any citizen of Budva to the Serbian Tsar (*avanti la Signoria*). Then a jury had to be organized between the defendant's fellow-townsman, except in the case when a person had a bad reputation. The duty of jurors was to swear that they believe in the oath of the accused person, i.e. to acquit on oath and release somebody from accusation. If any citizen of Budva refused to swear for his fellow-townsman, he would have to pay all charges that the accused person had to pay.²²⁶ It is clear that jurors in Budva were conspirators, as was the case in Serbia.

6.3 Novo Brdo

The Law of Mines does not contain systematic provisions on trial procedure, only scattered information of two types of evidence: documents and testimony.

Written documents were the most important evidence, and records of them were kept by a special official called *urbarar* (*urbararius*). This is clear from articles 7, 13, 14, 16, 27, 29, 37 and xxI.

Testimony was mentioned in several article (8, 15, 17, 29, 37, xxI), but it is not clear whether it was only the oral statement of witnesses or evidence derived

²²² On *aptagi* in Dubrovnik, see I. Puhan, “*Aptagi* dubrovačkog prava” [“*Aptagi* in the Law of Dubrovnik”], *Istorijsko-pravni zbornik* 3–4 (1950), pp. 200–214, and J. Danilović, “O pravnoj prirodi i razvoju ustanove *Aptagi* dubrovačkog prava” [“On the Legal Concept and Development of the Institute *Aptagi* in Ragusan Law”], *IČ* 12–13 (1963), pp. 31–90.

²²³ On *aptagi* in Kotor see Sindik, *Komunalno uređenje Kotora*, pp. 109–110.

²²⁴ *Lexicon latinitatis medii aevi Iugoslaviae*, vol. I (Zagreb 1969), p. 33 (article “*aptagi*”).

²²⁵ For more details on *attazzi* in Budva, see Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, pp. 252–256.

²²⁶ Cap. 264, *De adimandar forestier o cittadino: Statuimo, che se alcun forestier dimandasce alcun nostro cittadino avanti la Signoria, per il qual cittadino fosse posta porotta di nostri cittadini, li quali nostri cittadini siano tenuti di giurar per il nostro cittadino in tal modo, che il nostro cittadino sia libero della questione, che fosse dimandato per il forestier. Et se alcun nostro cittadino non volesse giurar per il nostro cittadino per deliberarlo, che sia tenuto pagarli tutto il danno et le spese, che havesse fatto il nostro cittadino per causa del forestier, eccetto però se fosse di mala fama, per il qual non sia tenuto di giurar più.*

from writings. Article 15 simply orders that “everyone has to be believed for testimony” (*свакы да је вѣрованъ за свѣдож’боу*).²²⁷

6.4 *Towns Conquered from Byzantium*

Trial procedure in towns conquered from Bzyantium was similar to those in the Serbian part of the Empire. Litigants (plaintiff and defendant), summons, evidence, jury, pronouncement and execution of judgments were regular parts of trial procedure, as was the case in the “Serbian lands”. This can be seen from surviving minutes (memoranda or notes of a proceeding) of the Serres’ city-court and the court of Protaton (Πρωτάτον), the central administration of Mount Athos.²²⁸

227 Ed. Radojčić, p. 41.

228 Some cases were examined by Živojinović, “Sudstvo u grčkim oblastima srpskog carstva”, pp. 238–246.

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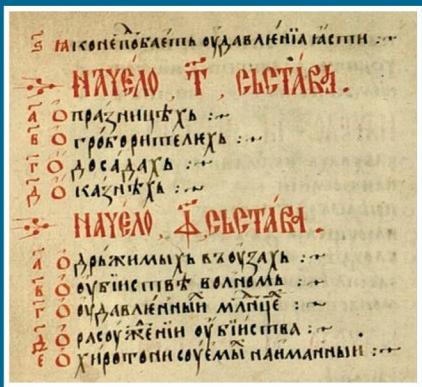
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Firmly rooted in primary source research and showing strong awareness of the contemporary historical context, this comprehensive study examines different types of law – such as criminal law, constitutional law, and civil law – and the various legal systems and procedures in place during this time, offering a valuable synthesis while also presenting new views and novel interpretations of Serbian legal history.

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